

PROPOSED

DEVELOPMENT AGREEMENT

AMONG

THE CITY OF SAN ANTONIO, TEXAS,

**CIBOLO CANYON CONSERVATION AND
IMPROVEMENT DISTRICT NO. 1,**

AND

LUMBERMEN'S INVESTMENT CORPORATION

DRAFT: 03-13-02

**THIS IS A DRAFT FOR DISCUSSION PURPOSES ONLY. NO PARTY
IDENTIFIED IN THIS DRAFT HAS AGREED (EXPRESSLY OR BY
ACQUIESCENCE) TO ANY OF THE TERMS OR PROVISIONS INCLUDED
IN THIS DRAFT UNLESS AND UNTIL ALL PARTIES HAVE BEEN
AUTHORIZED TO SIGN, AND HAVE SIGNED, THIS DOCUMENT.**

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**DEVELOPMENT AGREEMENT AMONG THE CITY OF SAN ANTONIO, TEXAS,
CIBOLO CANYON CONSERVATION AND IMPROVEMENT DISTRICT NO. 1,
AND LUMBERMEN'S INVESTMENT CORPORATION**

This **DEVELOPMENT AGREEMENT** (*the "Development Agreement"*) is made and entered into as of the date set forth below by and among **THE CITY OF SAN ANTONIO, TEXAS ("City")** and **LUMBERMEN'S INVESTMENT CORPORATION ("Developer")**, subject to execution and ratification of this Development Agreement by **CIBOLO CANYON CONSERVATION AND IMPROVEMENT DISTRICT NO. 1 ("District")** upon the Election Date (herein defined), as herein set forth.

RECITALS

Developer owns the Land (herein defined) located within the exclusive extraterritorial jurisdiction of City, which Land is more fully described in the Act (herein defined). The Land contains geological features vital to City's underground water supply. Portions of the Land are situated within the Edwards Aquifer Recharge Zone and have unique plant and animal habitat.

Developer desires to develop the Land with a high quality, master-planned community, with at least one full service, resort style hotel, single and multi-family residential housing, related commercial uses and up to three (3) eighteen (18) hole golf courses. To facilitate such development and to serve a public use and benefit, the Legislature of the State of Texas established District in Bexar County, Texas, as a conservation and reclamation district, as set forth in the Act. Pursuant to the Act, the establishment of District by the Legislature is subject to a confirmation election which may not be held until City has approved an acceptable agreement concerning the development and annexation of the property within District, the operation of District and District's debt.

City seeks an agreement with Developer which (i) provides for Open Space (herein defined), (ii) limits development of the Land which unduly decreases the number of recharge features supporting the Edwards Aquifer, which is City's primary supply of water, and (iii) is consistent with either the development standards applicable to land within City's corporate limits or City's future growth and expansion of its corporate limits. City and Developer have identified certain portions of the Land which will remain as Open Space. Developer has agreed to grant a conservation easement to City covering all of the Open Space Restrictive Tracts (herein defined), and to convey such Open Space Restrictive Tracts to District, subject to such conservation easement.

It is the intent of this Development Agreement to define City's regulatory authority over the Land, to establish

an approved plan for the development of the Land, to establish certain restrictions and commitments imposed and made in connection with the development of the Land, to provide certainty to Developer and District concerning annexation and uses of the Land, to fulfill the requirement of the “development agreement” described in the Act and to additionally satisfy development, land use, water conservation, annexation, financial and environmental concerns of City and Developer. Accordingly, City, District and Developer are proceeding in reliance on the enforceability of this Development Agreement.

This Development Agreement is authorized by the Act and is also authorized by City’s broad and inherent authority, as a home-rule municipality under Article 11, Section 5, of the Texas Constitution, to exercise land-use planning and regulatory authority over its extraterritorial jurisdiction.

City enters into this Development Agreement on its behalf and on behalf of San Antonio Water System, the City - owned purveyor of water and sewer services.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants and conditions contained herein, and other good and valuable consideration, the parties hereto agree as follows:

DEFINITIONS AND INTERPRETATIONS

Unless the context requires otherwise, and in addition to the terms defined above, each of the following terms and phrases used in this Development Agreement has the meaning set forth below, unless the context in which such term or phrase is used in this Development Agreement clearly indicates otherwise:

“Act” means Senate Bill 1629, Acts of the 77th Legislature of the State of Texas, Regular Session 2001.

“Annual Debt Service Requirements” means, for any Fiscal Year, the total payments of principal and interest due and payable in such Fiscal Year according to the terms of the Bonds.

“Bonds” means Senior Bonds and Subordinate Bonds.

“Cibolo Canyon Extension” means the Public Improvement relating to the construction of the public roadway from the U.S. 281/Stone Oak Parkway intersection to Bulverde Road, as described in Exhibit A.

“City” means City of San Antonio, Texas, a home rule city and municipal corporation primarily situated in Bexar County, Texas.

“City Code” means the City Code of San Antonio, Texas, enacted by the City Council, which constitutes the code of civil and criminal ordinances of City.

“City Council” means the City Council of City of San Antonio, Texas, or any successor governing body.

“City Manager” means the duly appointed City Manager of City of San Antonio, Texas, her representative designated in writing or her successor in said office.

“City Representative” means the Acting Director or Director of Development Services or his/her replacement

identified by the City Manager, with notice of such replacement given to District Representative and Developer Representative in accordance with this Development Agreement.

“Completion” or **“Complete”** means the completion of the applicable work and improvements in accordance with all applicable Governmental Rules and substantially in accordance with the plans and specifications and other requirements, if any, contained in this Development Agreement such that, subject only to minor punch-list type items, all such work and improvements are finally complete and regardless of such punch-list type items, all improvements are ready for use for their intended purposes and are fully capable of such use.

“Confirmation Election” means the election to be held in accordance with the Act to confirm the establishment of District and to elect the initial directors of District.

“Conservation Easement” means the Conservation Easement to Preserve Open Space Land, in the form attached hereto as Exhibit B.

“Controlling Interest” means control of a majority of the outstanding stock of Developer or the ability to control a majority interest of the Board of Directors of Developer.

“County” means Bexar County, Texas.

“Developer” means the Lumbermen’s Investment Corporation, a corporation organized under the laws of the State of Delaware and qualified to do business in Texas, its successors and assigns.

“Developer Entity” means any individual, partnership, corporation or other entity which directly or indirectly has, owns or controls any interest in Developer.

“Developer Representative” means John K. Pierret or his replacement identified by Developer, with notice of such replacement given to District Representative and City Representative in accordance with this Development Agreement.

“Developer Transfer” means of sale, assignment, transference, conveyance, gift, pledge, mortgage or encumbrance of a Developer Entities’ interest in Developer.

“Development Plan” means the master development plan for the proposed development of the Land, which has been submitted to and approved by City in accordance with the UDC and a copy of which is attached hereto as Exhibit C, and any subsequent amendments thereto, from time to time, in accordance with this Development Agreement.

“Development Schedule” means the written schedule prepared by Developer and District and approved by City reflecting the agreed target dates for the start and/or completion of certain Public Improvements, a copy of which is attached to this Development Agreement as Exhibit D.

“Director of ID” means the Director of Infrastructure Development of SAWS or his/her designated representative.

“Director of Parks” means City’s Director of Parks and Recreation or his/her designated representative.

“Director of Planning” means City’s Director of Planning or his/her designated representative.

“Director of Public Works” means the Director of Public Works of City or his/her designated representative.

“Discharge” (or **“Discharged”**) means if and when the whole amount of the principal, premium (if any) and interest due and payable upon all of the Bonds shall be paid or deemed paid by deposit in escrow with an authorized

agent of an amount, or federal securities verified by a certified public accountant to be, sufficient to meet all requirements of the Bonds, as the same become due on the earlier to occur of (i) the next succeeding call date, (ii) the final maturity date, or (iii) any redemption date as of which a redemption option (if any) is exercised by a call of the Bonds for payment, to the effect that the amount of such escrow will be sufficient to cause all amounts due in connection with the Bonds to be paid when due until the earlier to occur of (i), (ii), or (iii) above; provided, however, that payment shall not be deemed made by a deposit by Developer until it is determined by City, based upon a certificate of Developer or other evidence reasonably acceptable to City, that no petition for relief under the federal Bankruptcy Code (11 U.S.C. § 101 et. seq.) has been filed by or against Developer within ninety-one (91) days after the deposit by Developer of any moneys or securities in escrow for payment of the Bonds or to cause such payment; and provided, further, that payment shall be deemed made by a deposit by District until it is determined by City, based upon a certificate of District or other evidence reasonably acceptable to City, that no petition for relief under the federal Bankruptcy Code has been filed by or against District within ninety-one (91) days after the deposit by District of any moneys or securities in escrow for payment of the Bonds to cause such payment.

“District” means the Cibolo Canyon Conservation and Improvement District No. 1, a conservation and reclamation district created by the Act, and all subdistricts created by District subject to this Development Agreement.

“District Representative” means the person so designated by resolution of the Board of Directors of District or his/her replacement identified by District, with notice of the identity of the person initially designated to serve as District Representative and each subsequent replacement to be given in writing to City Representative and Developer Representative in accordance with this Development Agreement.

“EAA” means the Edwards Aquifer Authority.

“EARZ” means the Edwards Aquifer Recharge Zone.

“EDU” means equivalent dwelling unit.

“Election Date” means the date on which the election contest period for the Confirmation Election has expired.

“Escrow Agent” means Marathon Title Company.

“Escrow Agreement” means the Escrow Agreement in substantially the form as attached to this Development Agreement as Exhibit E.

“ETJ” means the extraterritorial jurisdiction of City established pursuant to Chapter 212, Texas Local Government Code, as amended.

“Evans Road Cap” means the sum of money calculated from time to time in accordance with **Subsection 3.05(a)** hereof.

“Evans Road Improvements” means those Public Improvement projects so identified and defined and described in Exhibit A.

“Execution Date” means the later of (i) the date on which this Development Agreement, having been signed by Developer, is also signed by City or (ii) ten (10) days after City Council has approved execution of this Development Agreement on behalf of City.

“Fair Market Value” means the price that a willing seller, under no compunction to sell, would accept from

a willing purchaser, under no compunction to buy, as determined by the mutual agreement of District (after an appraisal), Developer and City or, in the absence of a mutual agreement, by (i) the average of two appraisals, one prepared by an appraiser selected by City and one prepared by an appraiser selected by Developer, if the difference between the two appraisals does not exceed 10% of the higher of such two appraisals, or (ii) if those two appraisals vary by more than 10%, by an appraisal prepared by a third appraiser jointly selected by the appraiser selected by City and the appraiser selected by Developer.

“Fire Station Tract” means the parcel of land so identified and described in the Development Plan, to be acquired by District from Developer and to be leased to City upon the terms set forth in the Fire Station Tract Lease.

“Fire Station Tract Lease” means a lease of the Fire Station Tract to City substantially in the form attached hereto as Exhibit E.

“Fiscal Consultant” means an independent person, firm or corporation selected by District and reasonably acceptable to City and Developer and having a widely known and favorable reputation for special skill, knowledge and experience in methods of (i) evaluating real estate developments of similar size and character as the Project and (ii) projecting the tax rate required to meet projected Annual Debt Service Requirements using projected assessed valuations and an appropriate tax collection rate.

“Fiscal Year” means the fiscal year designated by City, which currently ends on September 30 of each calendar year, which shall be the same fiscal year adopted by District.

“Force Majeure Event” means labor disputes, casualties (which are not the result of gross negligence or misconduct of a Party or their respective subcontractors, agents, or employees); acts of God including all days of rainy weather in excess of the normal number of days of rainy weather for San Antonio, Texas, as reflected in the most recent publication of “Local Climatological Data” by the National Climatic Data Center; unusual delays in transportation or shipping; the public enemy; governmental embargo restrictions or other governmental action with general public application which interferes with the construction of the Public Improvement; or shortages of fuel, labor or building materials which could not reasonably have been avoided by anticipatory action by District, Developer or their respective subcontractors, agents, or employees; or other delays due to causes beyond their control. For the purposes of the preceding sentence, a cause “beyond their control” does not include any act, omission, error or breach of duty of any person or entity that (i) directly or indirectly is able to direct or cause the direction of the management or policies of District or Developer, (ii) is subject to the direction of District or Developer, (iii) is in privity of contract with District or Developer with respect to the subject matter of this Development Agreement, (iv) is a contractor, subcontractor or sub-subcontractor providing labor or materials or other services in connection with such Public Improvement, or (v) is a limited liability company, joint venture, general partnership, or a limited partnership which in the case of a partnership has as its general partner, or in the case of a limited liability company, has any manager or member which is either (x) Developer or an affiliate of Developer or (y) a general partnership or limited partnership which has a general partner which is either Developer or a parent or subsidiary thereof.

“Geologic Map” means the site geological map attached to the Land Use Restrictions as Exhibit B thereto.

“Golf Course Management Plan” means the Cibolo Canyon Golf Course Development Environmental

Management Plan in the form attached hereto as Exhibit G, and as may be amended or supplemented from time to time in accordance with the terms thereof.

“Golf Course/Open Space Tracts” means the portion of the Land so identified and described in the Land Use Restrictions.

“Governmental Authority” means any applicable federal, state, county or City governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof) with jurisdiction over the Project.

“Governmental Rules” means any statute, law, treaty, rule, code, ordinance, regulation, permit, official interpretation, certificate or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority.

“Hotel” means the first full service, resort style hotel with approximately five hundred (500) guestrooms, to be built on the Hotel Tract.

“Hotel Commencement Date” means the date of the commencement of construction of the Hotel, as set forth in **Section 1.02(e)**.

“Hotel Completion Date” means the earlier to occur of (i) the first (1st) date on which a Certificate of Compliance has been issued by the Bexar County Fire Marshall, or (ii) the third (3rd) anniversary of the Hotel Commencement Date.

“Hotel Development Agreement” means the agreement(s) executed by Developer and Hotel Owner pursuant to which Hotel Owner is obligated to acquire the Hotel Tract from Developer and construct the Hotel, subject to the terms thereof.

“Hotel Management Agreement” means an agreement between Hotel Owner and Hotel Manager for the operation of the Hotel.

“Hotel Manager” means a hotel management company which operates full service, resort style properties and has access to an international reservation system supporting its operations.

“Hotel Owner” means SAHR, LLC, a Delaware limited liability company, or its assignee, or a similar developer of full service, resort style hotels.

“Hotel Tract” means the tract or parcel of land identified in the Development Plan as the site for the construction of the Hotel.

“Impervious Cover” means as defined in the Land Use Restrictions.

“Inferior Debt” means the indebtedness of District described in **Subsection 10.05(c)** of this Development Agreement.

“Land” means 2,852.4 acres of land, more or less, as described in the Act and such additional lands as may be added to District pursuant to the Act and this Development Agreement, from time to time.

“Land Use Restrictions” means the Declaration of Restrictive Covenants in the form attached hereto as in Exhibit I and all exhibits thereto, to be filed for record in Bexar County, Texas, in accordance with this Development Agreement.

“Letter of Credit” means each irrevocable letter of credit to be provided to City by Developer pursuant to this Development Agreement, or an extension thereof, in form and content reasonably acceptable to City and issued by a financial institution reasonably acceptable to City, payable by the issuer thereof upon sight draft, substantially in the form attached hereto as Exhibit J.

“Major Thoroughfare Plan” means the plan adopted by City Council September 21, 1978, as amended, which reflects proposed locations of major thoroughfares in the ETJ.

“Milestones” means those events as more fully described in **Section 1.02** of this Development Agreement.

“Mitigation” means as defined in 40 C.F.R. § 1508.20.

“Municipal Services Agreement” means the agreement between City and District for the provision of fire protection for the Project and its inhabitants, in the form attached hereto as Exhibit K.

“OIR” means City’s Office of Internal Review.

“Official Records” means the Official Public Records of Real Property of Bexar County, Texas.

“Open Space” means a land or water area for human use and enjoyment which is relatively free of man-made structures.

“Open Space Restricted Tracts” means that portion of the Land designated as Open Space and described in **Exhibit L** to this Development Agreement and any additional lands identified and designated by City and Developer as Open Space Restricted Tracts.

“Operating and Maintenance Expenses” means the expenses of District necessary for compliance with this Development Agreement, for salaries, labor, material, repairs, services, monitoring water uses and water quality, and other customary and ordinary for special taxing districts.

“Party” or “Parties” means a party or the parties to this Development Agreement, being City, Developer, and District.

“Payment Bond” means a bond of a corporate surety licensed in the State of Texas, such bond and surety approved by the Director of Public Works, issued solely for the protection and use of those payment beneficiaries who have a direct contractual relationship with Developer, the contractor, a subcontractor or material supplier related to the work, or their contractual assignees, in a penal sum equal to the penal sum of the related Performance Bond. A Payment Bond shall authorize payment for (i) labor used to carry out the work under the construction contract, (ii) materials used or ordered, delivered for use, directly to carry out such work, (iii) specially fabricated material, (iv) rental and running repair costs for construction equipment used or required and delivered for use, directly to carry out the work at the worksite, and (v) power, water, fuel and lubricants used, or ordered and delivered for use, directly to carry out the work.

“Performance Bond” means a bond of a corporate surety licensed in the State of Texas, such bond and issuer approved by the Director of Public Works, issued for the benefit of City and/or District, as appropriate, in the penal sum equal to one hundred percent (100%) of the cost of the work as set forth in the budget attached to the construction contract(s) for the applicable Public Improvement undertaken by Developer or District pursuant to this Development Agreement and being sufficient to fund the costs of Completion of the work described in such construction contract(s) in accordance with the terms thereof.

“Permitted Transfer” means as defined in **Section 15.06** hereof.

“POADP No. 452” means the Evans Road Tract Subdivision Preliminary Overall Area Development Plan No. 452, accepted by City subject to the terms and conditions set forth in letter dated January 20, 1995, from David W. Pasley, Director of Planning, Department of Planning, City of San Antonio, to Rueben (sic) Cervantes, Pape-Dawson Engineers.

“PGA” means the Professional Golfers’ Association of America.

“PGA Agreement” means the agreement(s) between PGA and Developer pursuant to which PGA will construct, acquire and/or operate the PGA Complex.

“PGA Complex” means the golfing resort to be constructed, acquired and/or operated by PGA, comprised of not fewer than two (2) golf courses, a learning center and related amenities on the tract(s) of land so identified in the Development Plan.

“PGA Golf Course Tracts” means Tract One and Tract Two (as defined and described in the Land Use Restrictions).

“Project” means the entire proposed development of the Land as set forth in the Development Plan.

“Public Improvements” means those public improvement projects to be constructed inside and outside District as defined and described in Exhibit A.

“Recycled Water” means wastewater which has been treated to meet the most stringent standards required from time to time by any policy hereafter adopted by City, or other Governmental Rules, and in effect with respect to use of recycled water in the EARZ, including any amendments thereto.

“Reimbursement Agreement” means any agreement between Developer and District whereby Developer advances funds to District pursuant to **Subsection 10.05(d)** of this Development Agreement.

“Revenues” means all of the revenues and income of every nature and from whatever source derived by District (but excluding grants and donations for capital purposes) including, but not limited to, ad valorem taxes, hotel occupancy taxes, sales taxes, impact fees, other available revenues and the balances in any fund accounts of District, but excluding the Reserve Fund described in **Subsection 10.04(i)**.

“SAWS” means the San Antonio Water System, the City-owned purveyor of water and sewer services.

“Senior Bonds” means evidences of debt of District as described in **Subsection 10.05(a)** hereof.

“Sewer Contract” means the “OSA Sewer Service Contract” dated February 29, 2000, between City and Developer.

“State” means the State of Texas.

“Subordinate Bonds” means evidences of debt of District as described in **Subsection 10.05(b)** hereof.

“Termination Event” means those events described in ARTICLE 14 which give rise to the automatic or optional termination of this Development Agreement.

“TNRCC” means the Texas Natural Resource Conservation Commission and its successors.

“Trail Head Improvements” means those Public Improvements so identified, defined and described in Exhibit A.

“Trail Head Tract Lease” means a lease of the Trail Head Tract to City substantially in the form attached hereto as Exhibit M.

“Trail Head Tract” means the 5.832 acre tract (more or less) shown in the Development Plan, to be acquired by District and to be leased to City pursuant to the Trail Head Tract Lease.

“Trinity Wells” means all water wells now existing or to be hereafter located on the Land completed to draw water from the Trinity Aquifer.

“Unified Development Code” or ***“UDC”*** means Chapter 35 of the “City Code of City of San Antonio” as it exists on the Execution Date and any subsequent amendments to those sections of the UDC which address or cover drainage, flood plain regulation and aquifer protection.

“Vested Rights Permit” means the Vested Rights Permit Application numbered “VRP 01-11-38” dated November 13, 2001, approved by City on December 7, 2001.

“Water Commitment” means the SAWS Water Commitment Letter to be issued by SAWS to Developer upon approval of the SAWS Board of Trustees in the form attached to this Development Agreement as Exhibit N.

“Water/Wastewater Construction Standards” means the “San Antonio Water System’s Specifications for Water and Sanitary Sewer Construction” dated October, 2001, as amended from time to time.

“Water Pollution Abatement Plan” means the water pollution abatement plan which must be submitted for approval by SAWS, EAA and TNRCC in accordance with the Land Use Restrictions and 30 TAC §213, et. seq.

“WSJ Prime” means the prime rate of interest as most recently published in the Wall Street Journal prior to the date of determination of any applicable rate of interest under this Development Agreement. If the Wall Street Journal ceases to publish or announce a prime rate of interest, the Parties shall mutually agree upon a substituted, but comparable, interest rate index.

ARTICLE 1. INTRODUCTORY MATTERS; MILESTONES

Section 1.01. Execution Date.

As of the Execution Date, the following actions shall have been taken and confirmed by the Parties:

(a) Development Plan Approval. Developer has submitted its application for approval of the Development Plan, in accordance with the UDC, as a mandatory “Master Development Plan,” and the Director of Planning has approved the Development Plan, a copy of which is attached hereto as Exhibit C. City agrees that, although Developer has submitted the Development Plan as described herein, if this Development Agreement is terminated prior to the Hotel Commencement Date, Developer may withdraw its filing of the Development Plan and Developer’s POADP No. 452 will be deemed to be effective as if the Development Plan had not been submitted for approval.

(b) Land Use Restrictions. Developer has filed for record, or caused to be filed for record, the Land Use Restrictions in the Official Records, subject to termination of such Land Use Restrictions as therein provided.

(c) Escrowed Agreements. Developer and City shall enter into the Escrow Agreement as of the Execution Date, and the Escrow Agreement shall be effective for City and Developer as of the Execution Date. District shall execute and ratify the Escrow Agreement as of the Election Date, and the Escrow Agreement shall be effective for

District as of the Election Date. The following documents have been approved for execution, executed and delivered into escrow with Escrow Agent in accordance with the Escrow Agreement, by each of the parties to such documents; each document requiring execution by District shall be executed by District, where applicable, within forty-five (45) days following the Election Date:

- (i) Conservation Easement;
 - (ii) the Fire Station Tract Lease;
 - (iii) the Trail Head Tract Lease; and
 - (iv) the Municipal Services Agreement.
- (d) Letter of Intent from PGA. City has received a letter of intent from PGA confirming its commitment to the PGA Complex.
- (e) Geologic Map. The Geologic Map has been approved in writing by (i) a geologist selected by Developer, a geologist selected by SAWS and EAA, and (iii) a geologist mutually selected by the geologists so selected by Developer and by SAWS and EAA. Such approval of the Geologic Map shall confirm that the Geologic Map identifies all sensitive features (as defined in 30 TAC § 213.3(27), as amended, known to exist on the Land as of the Execution Date, as well as areas for which additional study and determinations shall be required prior to development.

Section 1.02. Milestones.

(a) Development Documents Date. Within six (6) months of the Execution Date, Developer shall have entered into the following agreements, copies of which will be made available to City's consultant or legal counsel (as designated by City Representative) for review, subject to appropriate agreements of confidentiality. City's consultant or legal counsel shall review each agreement to determine if such agreement complies with the requirements set forth in this **Section 1.02**. City shall notify Developer and District of any discrepancies between each agreement and the requirements of this **Section 1.02** within thirty (30) days of the date on which the subject agreement was provided to City's consultant or legal counsel, as applicable. Upon receipt of notice from City of any discrepancy, Developer shall have thirty (30) days to amend such agreement to remove or cure such discrepancy.

(i) Hotel Development Agreement. The Hotel Development Agreement, subject to no material contingencies other than:

- (1) occurrence of the Election Date;
- (2) the issuance of all necessary permits of Governmental Authorities for the construction of the Hotel and all related amenities;
- (3) loan commitments sufficient for financing of the construction costs of the Hotel and all related amenities;
- (4) the execution of the PGA Agreement by PGA; and
- (5) the execution of the Hotel Management Agreement by any party thereto other than Developer.

In addition, the Hotel Development Agreement shall require the Hotel Owner to use its best efforts

to require that the Hotel operations comply with the “Wage Standard” set forth in the City’s Tax Phase-In and Reinvestment Zones Guidelines and Criteria dated December 2001, as amended.

(ii) Hotel Management Agreement. The Hotel Management Agreement, subject to no material contingencies other than:

- (1) occurrence of the Election Date;
- (2) the Completion of construction of the Hotel; and
- (3) the execution of the PGA Agreement by PGA.

In addition, the Hotel Management Agreement shall require that the Hotel Manager use its best efforts to comply with the “Wage Standard” set forth in the City’s Tax Phase-In and Reinvestment Zones Guidelines and Criteria dated December 2001, as amended, in the operation of the Hotel.

(iii) PGA Agreement. The PGA Agreement, subject to no material contingencies other than:

- (1) occurrence of the Election Date;
- (2) the issuance of all necessary permits of Governmental Authorities for the construction of the PGA Complex; and
- (3) the Completion of construction of the Hotel; and
- (4) commitments for financing of the PGA Complex.

(b) Confirmation Election Date. The Confirmation Election shall be held on September 14, 2002, provided City’s Ordinance authorizing the execution of this Development Agreement has become final in accordance with applicable law in sufficient time to permit compliance by District with all notice and clearance requirements and, if not, on the next election date after such requirements have been met.

(c) Date of Conveyance of Open Space Restricted Tracts. The Open Space Restricted Tracts shall be conveyed to District subject only to such exceptions, reservations and limitations which are consistent with the purposes of the Conservation Easement and which will not and could not diminish or impair the benefits accruing to City pursuant to the Conservation Easement. Not later than one hundred twenty (120) days following the Election Date:

(i) The Fair Market Value of Tract ____ and Tract _____ of the Open Space Restricted Tracts shall have been determined in accordance with **Subsection 4.02(b)** of this Development Agreement.

(ii) Developer shall have provided to City, for City’s review and approval, legible copies of each of the following documents with respect to the Open Space Restricted Tracts:

- (1) a commitment for title insurance in the stated amount of the purchase price, committing to insure fee simple title to District subject to exceptions and encumbrances therein set forth;
- (2) legible copies of all exceptions and encumbrances identified in the commitment for title insurance;
- (3) a survey; and
- (4) the proposed deed of conveyance from Developer to District.

(iii) City shall have had not less than twenty (20) days to review and approve such documents to ensure compliance thereof with the purposes and intent of this Development Agreement. In the event that City shall

object to the form or content of any such documents, Developer shall cure such objection to the reasonable satisfaction of City. The date of conveyance of the affected tract may be delayed until Developer has cured City's objection, not to exceed a total of sixty (60) days of delay.

(iv) Conservation Easement shall be released from the escrow in accordance with the Escrow Agreement, delivered to City and recorded by City in the Official Records.

(v) Developer shall have granted and conveyed to District the Open Space Restricted Tracts subject to:

(1) the exceptions and encumbrances approved by City;

(2) the Conservation Easement;

(3) a deed of trust securing the repayment of the unpaid portion of the purchase price therefor, as required under **Subsection 4.02(b)** of this Development Agreement; and

(4) the contractual obligation of District to reconvey the Open Space Restricted Tracts to Developer upon any termination of this Development Agreement which has occurred prior to the Hotel Completion Date.

(d) Date of Conveyance of Fire Station Tract and Trail Head Tract. The Fire Station Tract shall be conveyed by Developer to District subject only to such exceptions, reservations and limitations which are consistent with the intended use of such tract and which will not and could not diminish or impair the benefits accruing to City pursuant to the Fire Station Tract Lease. The Trail Head Tract shall be conveyed by Developer to District subject only to such exceptions, reservations and limitations which are consistent with the intended use of such tract and which will not and could not diminish or impair the benefits accruing to City pursuant to the Trail Head Tract Lease. On or before the Hotel Completion Date:

(i) The Fair Market Value of the Fire Station Tract and the Trail Head Tract shall have been determined.

(ii) Developer shall have provided to City, for City's review and approval, legible copies of each of the following documents with respect to the Fire Station Tract and the Trail Head Tract:

(1) a commitment for title insurance in the stated amount of the purchase price, committing to insure fee simple title to District subject to exceptions and encumbrances therein set forth;

(2) legible copies of all exceptions and encumbrances identified in the commitment for title insurance;

(3) a survey; and

(4) the proposed deed of conveyance from Developer to District.

(iii) City shall have had not less than twenty (20) days to review and approve such documents to ensure compliance thereof with the purposes and intent of this Development Agreement. In the event that City shall object to the form or content of any such documents, Developer shall cure such objection to the reasonable satisfaction of City. The date of conveyance of the affected tract may be delayed until Developer has cured City's objection, not to exceed a total of sixty (60) days of delay.

(iv) Developer shall have granted and conveyed to District the Fire Station Tract and the Trail Head Tract for a purchase price equal to the Fair Market Value thereof, subject to:

- (1) the exceptions and encumbrances approved by City; and
- (2) a deed of trust securing the repayment of the unpaid portion of the purchase price

therefor.

(e) Hotel Commencement Date. The construction of the Hotel will commence on or before December 31, 2003; provided, however, that if a revised Hotel Development Agreement is submitted to City by December 31, 2003, which excludes all financing contingencies, then the construction of the Hotel may be delayed to commence on or before December 31, 2004. For the purposes of this Development Agreement, commencement of construction of the Hotel will be deemed to occur on the date that site grading has commenced on the Hotel Site and has continued for not less than thirty (30) days. Developer shall provide written notice to District and to City Representative of the date on which the site grading has commenced on the Hotel Site.

(f) Hotel Completion Date. Developer shall cause the Hotel Manager to provide written notice to City and to District of the Hotel Completion Date. On the Hotel Completion Date, the PGA Complex shall have been Completed and Developer shall have conveyed to PGA the PGA Golf Course Tracts pursuant to the PGA Agreement.

Section 1.03. Required Progress Reports.

Not less often than every sixth (6th) month following the Hotel Commencement Date and ending on the Hotel Completion Date, Developer shall provide to City Representative a detailed progress report on the construction of the Hotel and of the PGA Complex, including the estimated time frame for Completion of such projects.

ARTICLE 2. DEVELOPMENT PLAN

Section 2.01. Amendment of Developer's Vested Rights.

In addition to the Vested Rights Permit, Developer claims Category 1 status for that portion of the Open Space Restricted Tracts described as Tract ____ in Exhibit L [*Carabetta*]. Notwithstanding the foregoing, Developer agrees that, from and after the Execution Date:

(a) Impervious Cover will be limited to no more than fifteen percent (15%) of the total surface area of the Land.

(b) Notwithstanding **Subsection 2.01(a)** above, if this Development Agreement shall terminate prior to the Hotel Commencement Date, Developer and City agree that all vested rights accruing to Developer pursuant to the Vested Rights Permit shall survive such termination.

(c) Notwithstanding **Subsections 2.01(a) and 2.01(b)** above, if this Development Agreement shall terminate on or after the Hotel Commencement Date, but prior to the Hotel Completion Date, Developer and City agree that the Land will be re-classified as Category 2 property for the purposes of determining permitted Impervious Cover pursuant to Chapter 34 of the City Code, except Tract ____ of the Open Space Restricted Tracts [*Wolverton*], which

will remain as Category 3 property for the purposes of Chapter 34 of the City Code. In such event, all other rights accruing to Developer pursuant to the Vested Rights Permit, if any, shall survive such termination.

The provisions of this **Section 2.01** shall survive any termination of this Development Agreement.

Section 2.02. Application of City Codes.

Notwithstanding the applicability of Section 34-926 of the City Code to any portion of the Land, Developer and District agree:

(a) Application of UDC. Development of the Land will be subject to and governed by all provisions and requirements of the UDC generally applicable to real property and improvements located within the ETJ.

(b) Certain Ordinances. The Land will be subject to, and Developer and District shall abide by and comply with, all of City's ordinances regarding drainage, flood plain regulation and aquifer protection and any amendments to City ordinances including, without limitation, those ordinances identified in the Land Use Restrictions.

(c) EARZ. Without limiting the generality of the foregoing **Subsection 2.02(b)**, District and Developer shall comply with all applicable Governmental Rules concerning or affecting development in the EARZ and protection of the Edwards Aquifer, including, without implied limitation, the requirements of the UDC and the regulations of the TNRCC.

(d) Tree Preservation Ordinance. Without limiting the generality of the foregoing **Subsection 2.02(a)**, the Tree Preservation Ordinance as set forth in Section 35-523 of the City Code will apply to the Land.

Section 2.03. Amendment of Development Plan.

Any proposed amendment of the Development Plan shall be submitted to the City Representative at the same time that such proposed amendment is submitted to the Director of Planning in accordance with the UDC. Revisions to the Development Plan shall be classified as minor or major revisions, as provided in the UDC. Minor Revisions shall be administratively accepted and will not be subject to review by City agencies or departments. For the purposes of this Development Agreement, major revisions of the Development Plan shall be dealt with accordingly under the provisions of Section 35-345 of the UDC and include (without implied limitation): (i) any increase in the total number of residential units in the entire Development Plan, (ii) any increase in the total commercial acreage within the Development Plan, (iii) any increase in the total acreage within the Development Plan, (iv) any increase in total cumulative traffic impacts of the entire Development Plan upon outlying transportation infrastructure, (v) any decrease above five percent (5%) in the total Open Space acreage within the Development Plan, (vi) any decrease in perimeter buffers between the Development Plan and adjacent properties; and (vii) any changes in a proposed land use node from residential to an office, commercial or light industrial use, if the property where the proposed change is to occur abuts existing property in which the principal use is single family residences. City's approval rights do not subject the Land to City's zoning authority; such jurisdictional authority shall only be acquired upon annexation. However, the land uses identified on the Development Plan (i) reflect land uses which are consistent with the water demands and usage anticipated by the Project, (ii) reflect sewage flows which are consistent with the wastewater demands and flows anticipated by the Project and (iii) preserve

the Open Space Restricted Tracts and Golf Course/Open Space Tracts. Notwithstanding the foregoing, the Development Plan may not be amended by Developer in any manner which is contrary to the terms of this Development Agreement (including, without limitation, the Land Use Restrictions) without City Council's approval.

Section 2.04. Water Pollution Abatement Plan.

The Parties have agreed, and the Land Use Restrictions provide, that no development of any portion of the Land may be undertaken unless and until (i) a Water Pollution Abatement Plan has been prepared covering the portion of the Land to be developed, based upon a prior geologic assessment of such portion of the Land and other requirements of TNRCC now or hereafter in effect, (ii) the Water Pollution Abatement Plan and all supporting data have been submitted to SAWS and EAA prior to submission to TNRCC, (iii) SAWS and EAA have approved the Water Pollution Abatement Plan. Approval of SAWS shall be given, deemed given or withheld in accordance with the Land Use Restrictions.

Section 2.05. Development Fees.

Developer and District agree to pay City all application, plan review, plat review, and filing fees applicable to the approval of subdivision plats in the ETJ and all fees (including, without limitation, impact fees, traffic impact analysis fees, water/wastewater impact fees, water supply fees, general benefit fees and stormwater management fees) assessed with respect to the Project at the times and in the amounts set forth in the UDC, the Water Commitment and the Sewer Contract, as applicable. Such fees will be the standard fees in effect on the Execution Date.

Section 2.06. Moratoria on Building in District.

The Parties agree that one of the primary purposes of this Development Agreement is to provide certainty as to the regulatory requirements applicable to the development of the Land for a reasonable period of time. Feasibility of the development of the Land is dependent upon a predictable regulatory environment and stability in the projected uses of the Land. In exchange for Developer's and District's performance of the obligations described in this Development Agreement, City agrees that it will not impose or attempt to impose any moratoria on development or construction within District, so long as such development or construction complies with this Development Agreement and with the Development Plan.

Section 2.07. Amendment of Major Thoroughfare Plan.

City agrees to amend the Major Thoroughfare Plan as follows:

- (a) to delete that portion of the North/South Connector which extends north of Cibolo Canyon Boulevard (as shown on the Major Thoroughfare Plan);
- (b) to change that portion of the North/South Connector between Evans Road and Cibolo Canyon Boulevard from an 'arterial connector' roadway to an 'arterial collector' roadway ; and
- (c) to revise the location of the proposed roadway identified as "Wilderness Oaks" to a location outside the Land.

ARTICLE 3. PUBLIC IMPROVEMENTS

Section 3.01. Reimbursement to Developer.

To the extent that Developer shall perform the obligation of District to construct or Complete any or all of the Public Improvements, District shall reimburse Developer for the expenditures of Developer in connection therewith to the extent permitted by applicable Governmental Rules and by the terms and conditions of this Development Agreement.

All such Public Improvements constructed on the Land shall comply with the design, competitive bid, award, contracting and construction requirements as applicable to public improvement projects under Governmental Rules.

Section 3.02. Benefit of Public Improvements.

As a material condition to City's agreements under this Development Agreement, District and Developer have agreed and confirmed to City that all Public Improvements, upon Completion, will be of direct, material benefit to District. Developer shall, on or before the applicable date set forth in the Development Schedule, undertake and Complete and/or acquire, as applicable, the Public Improvements identified in Exhibit A, subject to the terms and conditions set forth in this Development Agreement and any Reimbursement Agreement.

Section 3.03. Development Costs.

District shall fund the costs of all Public Improvements, including (without limitation) all hard and soft costs related to the Public Improvements, or shall acquire such Public Improvements from Developer, in accordance with applicable Governmental Rules and this Development Agreement.

Section 3.04. Application of City Codes.

Although the Land is located in the ETJ, all improvements and construction in connection with each Public Improvement shall comply with those provisions of the City Code (including, without limitation, the City Code of Ordinances, the City Building Code-General Provisions, the City Electrical Code, the City Mechanical Code, the City Plumbing Code, the City Fire Code and the Unified Development Code) which would be applicable if each Public Improvement were constructed within the corporate limits of City, if any. Notwithstanding the foregoing, the improvements and construction related to the Public Improvements located in the ETJ will not require the issuance of City building permits.

Section 3.05. Evans Road Improvements.

District shall either undertake and Complete the Evans Road Improvements on or before the tenth (10th) anniversary date of the Hotel Completion Date, provided that District's financial obligation for the Evans Road Improvements shall not exceed the Evans Road Cap, or on such anniversary date, fund to City the sum of \$6,000,000.00 (less any credits which may be applied under this **Section 3.05**), which sum shall be applied by City to Complete the

Evans Road Improvements. District may undertake one or more projects comprising the Evans Road Improvements at any time and from time to time prior to the tenth (10th) anniversary of the Hotel Completion Date, with City's prior, written approval, and shall receive a credit for all amounts actually expended by District in connection therewith, against the Evans Road Cap, in accordance with **Subsection 3.05(e)**. All approved Evans Road Improvements projects will be subject to all requirements applicable to public improvement projects under Governmental Rules.

(a) Calculation of Evans Road Cap. The Evans Road Cap shall be calculated not less often than annually prior to the date on which Developer must provide to City the annual Letter of Credit required pursuant to **Subsection 3.05(e)**. The Evans Road Cap is that amount which results from the following formula: $\$6,000,000 \times (1 + \text{WSJ Prime})^n$, where WSJ Prime is determined as of the first day of the Fiscal Year in which the Evans Road Cap is calculated and ⁿ is the number of years between the date of such calculation of the Evans Road Cap and the tenth (10th) anniversary date of the Hotel Completion Date. For example, if the Evans Road Cap is calculated on the Hotel Completion Date and WSJ Prime has been determined to be 4.75%, the formula would calculate an Evans Road Cap equal to \$3,772,340.91, being $\$6,000,000 \times (1 + .0475)^{10}$.

(b) Design Obligations. Upon receipt of City's approval, District shall cause to be prepared all required plans and specifications for the construction of an approved Evans Road Improvements project. All completed designs, plans and specifications prepared by District for the Evans Road Improvements must be submitted to and approved by the Director of Public Works before any site work may commence. The results of the Director of Public Work's review of plans and specifications, if such documentation was complete when submitted, will be communicated to District not later than fifty (50) days following the date of submission. Once approved, said plans and specifications shall not be materially modified without the prior written permission of the Director of Public Works.

(c) Bids. The approved plans and specifications shall be submitted in the manner required for bids for public improvements under Governmental Rules. Any bid which District is willing to accept shall be submitted to the Director of Public Works for approval, which approval will not be unreasonably withheld.

(d) Construction Contract. The construction contract(s) for any part of the approved Evans Road Improvements project must be submitted to the Director of Public Works for approval, which approval will not be unreasonably withheld, and work shall not commence under such contract(s) unless and until such approval has been obtained. All contractors performing work on any Evans Road Improvements project must provide a Payment Bond and a Performance Bond.

(e) Credits to District. Project costs actually expended by District in the construction and Completion of the Evans Road Improvements prior to the tenth (10th) anniversary of the Hotel Completion Date will be credited against the present value of the Evans Road Cap calculated as of the date of the actual expenditure of the funds for the purpose of the specific portion of the Evans Road Improvements by District. To receive such credit, District shall submit adequate documentation to City reflecting the nature and date of such expenditure sufficient to permit City to verify the purpose thereof. The present value of the Evans Road Cap will be computed using a discount rate equal to the stated prime rate of Frost Bank, San Antonio, on the date sixty (60) days prior to the date that the Letter of Credit is required to be issued.

(f) Letter of Credit for Evans Road Improvements. On or before thirty (30) days following the Hotel Completion Date and annually thereafter on each succeeding October 1 until the tenth (10th) anniversary date of the Hotel Completion Date or until the Evans Road Improvements are Completed or the amounts actually expended by District equal the Evans Road Cap, Developer shall deliver to City a Letter of Credit in an amount equal to the Evans Road Cap (as most recently calculated prior to delivery of such Letter of Credit) less the credit(s) accruing to District pursuant to the preceding **Subsection 3.05(e)**. Such Letter of Credit shall be issued to City and be immediately available for funding. City may draw upon the Letter of Credit for the full stated amount thereof on the earlier to occur of (i) the tenth (10th) anniversary of the Hotel Completion Date, or (ii) three hundred fifty (350) days after the date of issuance of such Letter of Credit (or extension thereof) if Developer has not provided the replacement Letter of Credit therefor, or (iii) the date on which this Development Agreement is terminated. City shall be required to use any amount drawn on such Letter of Credit solely for the Evans Road Improvements, and any amounts drawn by City under the Letter of Credit not required for Completion of the Evans Road Improvements shall be paid to Developer.

Section 3.06. Cibolo Canyon Extension.

District shall undertake and Complete, at District's sole expense, the Cibolo Canyon Extension, on or before the expiration of two (2) years following the later to occur of (i) acquisition by City of the right-of-way for the Cibolo Canyon Extension, to the extent required for the construction of a secondary arterial roadway under the UDC, or (ii) the Hotel Completion Date. The Cibolo Canyon Extension will be subject to all requirements applicable to public improvement projects under applicable Governmental Rules. The Cibolo Canyon Extension shall comply with the Major Thoroughfare Plan

(a) Design Obligations. Commencing upon notice from City to District that City has acquired all required right-of-way for the Cibolo Canyon Extension, District shall commence preparation of all required plans and specifications for the construction of the Cibolo Canyon Extension, including without limitation, preparation and submission of a Water Pollution Abatement Plan to SAWS, EAA and TRNCC. All completed designs, plans and specifications prepared by District for the Cibolo Canyon Extension must be submitted to and approved by the Director of Public Works, before any site work may commence. Such Director's approval is in addition to the usual and customary approvals required for construction by City Codes. Once approved, said plans and specifications shall not be materially modified without the prior written permission of the Director of Public Works.

(b) Construction Contract. The construction contract(s) for the Cibolo Canyon Extension must be submitted to the Director of Public Works for approval, which approval will not be unreasonably withheld, and work shall not commence under such contract(s) unless and until such approval has been obtained. All contractors performing work on the Cibolo Canyon Extension must provide a Payment Bond and a Performance Bond. Any delay by City in exercising its approval rights for more than sixty (60) days after complete documentation has been provided to City in connection therewith (including, without limitation, all supplemental documentation reasonably requested by City) will extend the two (2) year period described in this **Section 3.06**.

(c) Cibolo Canyon Extension Letter of Credit. Developer shall provide to City a Letter of Credit in the

stated amount of \$4,000,000.00 not later than thirty (30) days following the Hotel Completion Date and annually thereafter until Completion of the Cibolo Canyon Extension. The Letter of Credit shall be issued to City and be immediately available for funding. City may draw upon the Letter of Credit for the full stated amount thereof (i) if District has not Completed construction of the Cibolo Canyon Extension in accordance with this **Section 3.06**, or (ii) three hundred fifty (350) days after the date of issuance of such Letter of Credit if Developer has failed to provide the replacement Letter of Credit therefor, or (iii) the date on which this Development Agreement is terminated, if the Cibolo Canyon Extension is not then Completed. City shall use any amount drawn under such Letter of Credit solely for the Cibolo Canyon Extension, and any amounts drawn by City under the Letter of Credit not required for Completion of the Cibolo Canyon Extension shall be paid to Developer.

(d) **Payment and Performance Bonds.** Upon execution of each approved construction contract for the Cibolo Canyon Extension by all necessary parties, District shall provide to City, a Payment Bond and a Performance Bond, which bonds shall comply with the requirements of this **Subsection 3.06(d)**. At least thirty (30) days prior to commencement of construction under such construction contract, District shall submit such bonds to the Director of Public Works for approval. When approved, the Director of Public Works shall so advise District by written notice and City shall return to Developer the Letter of Credit required under **Subsection 3.06(c)** hereof.

Section 3.07. Trail Head Improvements.

District shall undertake and Complete the Trail Head Improvements on the Trail Head Tract, on or before the Hotel Completion Date provided that District shall not be required to fund more than \$250,000.00 therefor. In lieu thereof, District may provide a cash payment of \$250,000.00 to City on or before the Hotel Completion Date, provided that City shall be required to use all of such funds to Complete the Trail Head Improvements and any portion of such \$250,000.00 not expended to Complete the Trail Head Improvements shall be paid by City to District.

(a) **Design Obligations.** District shall cause to be prepared plans and specifications required for the construction of the Trail Head Improvements, including without limitation, preparation and submission of a Water Pollution Abatement Plan pursuant to **Section 2.04** hereof. All completed designs, plans and specifications prepared by District must be submitted to and approved by the Director of Parks before any site work may commence. The results of such Director's review of the complete plans and specifications will be communicated to District not later than fifty (50) days following the date of submission. Once approved, said plans and specifications shall not be modified without the prior, written permission of such Director.

(b) **Bids.** The approved plans and specifications shall be submitted in the manner required for bids for public improvements under Governmental Rules. Any bid which District is willing to accept shall be submitted to the Director of Parks for approval, which approval will not be unreasonably withheld.

(c) **Construction Contract.** The construction contract(s) for any part of the approved Trail Head Improvements project must be submitted to the Director of Parks for approval, which approval will not be unreasonably withheld, and work shall not commence under such contract(s) unless and until such approval has been obtained. All contractors performing work on the approved public improvement must provide a Payment Bond and a Performance

Bond.

(d) Payment and Performance Bonds. Prior to commencement of construction of any Trail Head Improvements, District shall obtain and provide to City a Payment Bond and a Performance Bond. At least thirty (30) days prior to commencement of construction, District shall submit such bonds to the Director of Parks for approval. When approved, such Director shall so advise District in writing.

Section 3.08. Effect of City Approvals.

City approvals required under this ARTICLE 3 are limited to the purposes of this Development Agreement and do not reflect any commitment, approval, representation, warranty or obligation with respect to the sufficiency, accuracy, completeness or integrity of any matters so approved by City, all of which are expressly disclaimed by City. Each approval by City is in addition to the usual and customary approvals required for construction or development under City Codes, to the extent applicable to the Public Improvements under the terms of this Development Agreement.

Section 3.09. Fire Station No. 48.

District shall pay in cash to City the sum of \$250,000.00 to fund a portion of the project costs for Fire Station No. 48 at such time as City may direct.

Section 3.10. Non-Discrimination.

With respect to the Public Improvements, District operations and professional services:

(a) Non-Discrimination. Developer and District shall not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and shall not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. Developer and District shall abide by all applicable terms and provisions of City's Non-Discrimination Policy, a copy of which policy being available in City's Department of Economic Development, OIR, Department of Human Resources and the City Clerk's Office.

(b) Adherence to Advocacy Policy. Developer and District shall abide by all applicable terms and provisions of City's Small, Minority or Woman-Owned Business Advocacy Policy. A copy of such policy is available in City's Department of Economic Development, OIR, Department of Human Resources and the City Clerk's Office.

(c) Adherence to Affirmative Action Policy. Developer and District shall abide by all applicable terms and provisions of City's Equal Opportunity Affirmative Action policy. A copy of such policy is available in City's Department of Economic Development, OIR, Department of Human Resources and the City Clerk's Office.

(d) Good Faith Effort Plan. Prior to the Execution Date, Developer and District shall submit a Good Faith Effort Plan to the City's Department of Economic Development. If material deficiencies in any aspect of the Small, Minority and Woman-Owned Business Enterprise utilization plan as set forth in either Developer's plan or District's plan are found as a result of a review or investigation conducted by City's Department of Economic Development,

Developer and District, as applicable, will be required to submit a written report to City's Department of Economic Development. Developer and District, as applicable, shall also be required to submit a supplemental Good Faith Effort Plan indicating its efforts to resolve any identified deficiencies. A denied plan, by the City's Department of Economic Development, will constitute failure to satisfactorily resolve any such deficiencies by Developer and District.

ARTICLE 4. OPEN SPACE RESTRICTED TRACTS

Section 4.01. Conveyance to District.

The Open Space Restricted Tracts shall be conveyed by Developer in accordance with **Subsection 1.02(c)** hereof. Following such conveyance, District will bear all costs of maintenance of the Open Space Restricted Tracts.

Section 4.02. Purchase Price.

District shall purchase the Open Space Restricted Tracts from Developer for a purchase price determined as follows:

(a) Tract No. [Carabetta]. District shall purchase Tract No. _____ of the Open Space Restricted Tracts for a purchase price equal to the lesser of (i) the Fair Market Value thereof, appraised as of a date which is not more than ninety (90) days prior to the date of the conveyance by Developer to District of such property, or (ii) the sum of \$5,100.00 per acre of such Tract No. _____, plus interest on such amount at the WSJ Prime in effect ninety (90) days prior to the date of such conveyance by Developer to District and all ad valorem taxes paid by Developer with respect to such Tract No. _____ from the date of Developer's acquisition thereof until the date of such conveyance by Developer to District.

(b) Tract No. [Wolverton] and Tract No. [LIC Open Space]. District shall purchase the remainder of the Open Space Restricted Tracts for a purchase price equal to the Fair Market Value thereof, appraised as of a date which is not more than ninety (90) days prior to the conveyance thereof from Developer to District.

Section 4.03. Conservation Easement.

From and after the conveyance of the Open Space Restriction Tracts pursuant to **Subsection 1.02(c)**, City will own, hold and enjoy the Conservation Easement. District shall be responsible for all costs of enforcing the terms of the Conservation Easement against any violations thereof, including violations caused or created by Developer or District, and shall pay all reasonable related attorneys' fees, court costs and costs of restoration unless such violations of the Conservation Easement result from the act or omission of City.

Section 4.04. Mitigation.

The only Mitigation requirements which may be imposed on the Open Space Restricted Tracts are (i) the Conservation Easement and (ii) with respect to Tract No. _____ of the Open Space Restricted Tracts only, such

Mitigation requirements as may be imposed by any Governmental Authority, except Tract No. _____ [Carabetta] except as prohibited pursuant to **Section 4.05** hereof.

Section 4.05. Tree Preservation.

No part of the Open Space Restricted Tracts may be used for purposes of mitigation under such Section 35-523 of the UDC or for providing tree preservation credits for any development of the Land.

ARTICLE 5. WATER

Section 5.01. Water Commitment.

Developer and SAWS have agreed upon the terms of the Water Commitment to be issued by SAWS to Developer in connection with the Development Plan, which Water Commitment will be executed by SAWS subsequent to City Council approval of this Development Agreement. The Water Commitment will be valid and binding upon SAWS and Developer unless and until this Development Agreement is terminated prior to the Hotel Completion Date. Upon such termination, Developer's water rights which existed prior to the Execution Date, if any, shall be reinstated. Developer agrees that the water capacity described in the Water Commitment is sufficient for the purposes of the Project reflected in the Development Plan. The provisions hereof shall survive any termination of this Development Agreement after the Hotel Completion Date.

Section 5.02. Assignment.

Developer and District shall comply with Chapter 34 of City Code. Developer **[shall/may]** convey **[all/certain]** of its rights under the Water Commitment to District, and SAWS has consented to such conveyance subject to District's assumption and agreement to perform all of the obligations of Developer thereunder; provided, however, that notwithstanding such assignment, Developer will not be relieved of such obligations. **[District to address language]**

Section 5.03. Water Infrastructure.

(a) Construction Obligations of District. Subject to this Development Agreement, District has the authority to purchase and/or construct water distribution facilities within the boundaries of District necessary or desirable for the development of the Land, including without limitation a system of pipes, water mains, laterals, service lines, hydrants, feeders, regulators, fixtures, connections and attachments and other desirable appurtenances necessary or proper for the purposes of transporting, storing, distributing, supplying and selling water for domestic, commercial, municipal and fire protection purposes and for any other purposes for which water may now or hereafter be used, to District and its inhabitants. Construction of all such water distribution facilities shall comply with the Water/ Wastewater Construction Standards in effect at the time of SAWS' written approval of the construction of such facilities. In addition and without limiting the foregoing, District shall construct and, prior to acceptance by SAWS, maintain such facilities to comply with the standards for service of the TNRC's "Rules and Regulations for Public Water Systems," as currently

promulgated and as same may be hereafter amended, supplemented, restated or superceded and replaced.

(b) Prior Approval By SAWS. Before the commencement of construction of public water projects and facilities on the Land, District will submit to the Director of ID all plans and specifications therefor and obtain written approval of such plans and specifications by the Director of ID. Upon such approval and prior to the construction of any facilities, District will give written notice to the Director of ID, stating the date on which construction shall commenced. All such public improvements constructed on the Land shall comply with the design, competitive bid, award and construction requirements as applicable to public improvement projects under Governmental Rules. The procedures set forth in this **Subsection 5.03(b)** are in addition to the standard practices required of developer customers or their agents in conducting business with SAWS.

(c) Existing Water Mains. SAWS shall permit District, if provided in the Water Commitment, connections to SAWS existing and/or proposed water mains situated near the boundaries of District at Bulverde Road and Evans Road and other points as may be reasonably necessary for delivery of water to District. District shall bear all cost and expense of such connections and shall be fully responsible to SAWS for any and all damage sustained by the existing water mains as a result of any act or omission of District in connection with the exercise of its rights hereunder to connect to same. SAWS shall be responsible for the continued operation and maintenance of the existing water mains in its service area.

(d) Conveyance of Facilities. The water distribution facilities purchased and/or constructed by District or caused to be constructed by District shall be conveyed to SAWS, subject to its prior inspection and approval of such facilities and acceptance of such conveyance in consideration of the agreements of SAWS described in **Section 5.03(f)**. If SAWS' inspection of the facilities should reveal that same are not in compliance with the Water/Wastewater Construction Standards or otherwise deficient for their intended purposes, prior to approval and acceptance by SAWS, District shall, without undue delay, undertake at its sole cost, such repairs, improvements, replacements and additions as are reasonably necessary to cause such water distribution facilities to comply with the Water/Wastewater Construction Standards and all requirements reasonably imposed by SAWS in connection therewith. Without limiting the foregoing, upon completion of construction, District shall furnish to SAWS a complete set of 'as built' plans, together with an engineer's letter of certification that all facilities were constructed in compliance with the Water/Wastewater Construction Standards and the plans and specifications approved by SAWS.

(e) Additional Facilities. From time to time during the term of this Development Agreement, as the development of the Land continues, District shall acquire or construct such additional water distribution facilities as may be hereafter necessary or desirable for the purposes described in this ARTICLE 5, all in compliance with the provisions of this ARTICLE 5, subject to the availability of sufficient funds.

(f) Maintenance. Following approval and acceptance by and conveyance to SAWS, the operation and maintenance of the water distribution facilities and delivery of water within District will be performed by SAWS pursuant to its standard operating procedures and requirements.

(g) Water Use Accountability. Water Use Accountability Specification No. 906 of the SAWS Standard Specifications for Construction, as amended, superceded or replaced, will be applicable to all construction

activities on any part of the Land.

Section 5.04. Water Service.

(a) SAWS Operations. SAWS will be the exclusive purveyor of water services to the Land. SAWS will provide service in accordance with its standard extension policies. All regulations adopted by SAWS concerning delivery of water service, including without limitation deposit requirements and collection of monthly charges for service, will be in full force and effect in the furnishing of services by SAWS under this Development Agreement, except the extent expressly limited by this Development Agreement. Neither District nor Developer shall permit any part of the Land to be included in any certified water service area other than the certified water service area of SAWS.

(b) Rates. SAWS shall be solely responsible for meter reading, billing, and collection within District, and shall collect all revenues therefrom. Water services will be provided to customers in District in substantially the same manner and under the terms, practices, conditions, fees, assessments, tolls and charges as SAWS has heretofore and may hereafter prescribe for its customers outside the city limits of City under applicable ordinances of City and SAWS's utility service regulations.

Section 5.05. Trinity Wells.

No water will be drawn from the Trinity Wells located within District, and all water servicing the Land shall be provided by SAWS pursuant to the Water Commitment. Notwithstanding the foregoing, however, Developer and District may use water from any Trinity Wells for the limited purpose of construction of the Hotel and Cibolo Canyon Boulevard (as described in Exhibit A) and related infrastructure but only until the earlier to occur of (i) the Hotel Completion Date, or (ii) a water pipeline accepted by SAWS is in place to permit delivery of water by SAWS to the Hotel Tract. SAWS, District and Developer may use the Trinity Wells for purposes of monitoring water quality under the Golf Course Management Plan.

ARTICLE 6. WASTEWATER COLLECTION AND TREATMENT

Section 6.01. Wastewater Capacity Assignment.

Developer and District shall comply with Chapter 34 of the City Code. Developer **[may/shall]** convey **[all/certain]** of its rights under the Sewer Contract to District including Developer's conditional rights to sewer service for a maximum of 4,500 EDUs thereunder, and SAWS has consented to such conveyance subject to the assumption and agreement of District to perform all of the obligations of Developer thereunder. Notwithstanding such assumption, Developer will not be released of such obligations but shall perform the same to the extent that District fails or is unable to perform the same. This provision shall not prohibit SAWS from providing or assigning any excess or unused capacity in the sewer line system to Developer or District. **[DISTRICT TO ADDRESS LANGUAGE]**

Section 6.02. Wastewater Infrastructure.

(a) Construction Obligations. Subject to the terms and conditions of this Development Agreement,

District has the authority to purchase and/or construct or cause to be constructed wastewater lines and facilities within or without the boundaries of District necessary or desirable for the development of the Land, including (without limitation) a system of pipes, wastewater mains, laterals, lift stations, man holes, connections or attachments and other desirable appurtenances necessary or proper for the purposes of collecting and transporting wastewater generated within the Land. Public wastewater collection services to the inhabitants of the Land shall be in accordance with the Sewer Contract. Construction of wastewater collection facilities shall comply with the Water/Wastewater Construction Standards, in effect at the time of SAWS' written approval of the construction of such facilities. All sanitary sewer improvements constructed on the Land shall comply with the design, competitive bid, award and construction procedures as applicable and as set forth in the Sewer Contract.

(b) Prior Approval by SAWS. Before the commencement of construction of wastewater projects and/or facilities on the Land, District will submit to the Director of ID, or that Director's designated representatives, all plans and specifications therefor and shall obtain approval of such plans and specifications therefrom. District will give prior, written notice to SAWS stating the date on which construction will be commenced.

(c) Existing Collection System. SAWS shall permit District, as provided in the Sewer Contract, to connect to SAWS' existing wastewater mains situated near the boundaries of the Land and other points as may be reasonably necessary to transfer wastewater from the Land.

(d) Conveyance of Facilities. The wastewater collection facilities purchased and/or constructed by District, or caused to be constructed by District, shall be conveyed to SAWS for and in consideration of the agreements of SAWS pursuant to **Subsection 6.02(e)** below, subject to SAWS' prior inspection and acceptance thereof. If SAWS's inspection of the facilities should reveal that same are not in compliance with the Water/Wastewater Construction Standards or are otherwise deficient for their intended purposes, prior to conveyance to SAWS, District shall, without undue delay and at its sole expense, undertake to Completion such repairs, improvements, replacements and additions as are necessary to cause such wastewater collection facilities to comply with the Water/Wastewater Construction Standards and all requirements reasonably imposed by SAWS in connection therewith. Without limiting the foregoing, upon completion of construction, District shall furnish to SAWS a complete set of 'as built' plans, together with an engineer's letter of certification that all facilities were constructed in compliance with the Water/Wastewater Construction Standards and the plans and specifications approved by SAWS.

(e) Maintenance. Following approval and acceptance by SAWS, the operation and maintenance of the wastewater collection system within District will be performed by SAWS pursuant to its standard operating procedures and requirements. In addition, and without limiting the generality of the foregoing, District shall construct and maintain such facilities, prior to acceptance by SAWS, to comply with the Standards for Services of the TNRCC's "Rules and Regulations for Public Water Systems" as currently promulgated and as same may be hereafter amended, supplemented, restated, superceded or replaced.

Section 6.03. Wastewater.

(a) SAWS' Operations. SAWS will be the exclusive purveyor of wastewater services to the Land.

SAWS will provide service in accordance with the Sewer Contract. All regulations adopted by SAWS concerning delivery of wastewater service, including without limitation deposit requirements and collection of monthly charges for service, will be in full force and effect in the furnishing of services by SAWS under this Development Agreement, except the extent expressly limited by this Development Agreement.

(b) Rates. SAWS shall be solely responsible for meter reading, billing, and collection within District, and shall collect all revenues therefrom. Wastewater services will be provided to customers in District in substantially the same manner and under the terms, practices, conditions, fees, assessments, tolls and charges as SAWS has heretofore and may hereafter prescribe for its customers outside the city limits of City under applicable ordinances of City and SAWS' utility service regulations. District finds and agrees said rate structure is fair and reasonable and hereby approves same.

ARTICLE 7. GOLF COURSES/ENVIRONMENTAL MANAGEMENT

Section 7.01. Golf Course Management Plan.

The Golf Course Management Plan is hereby adopted by the Parties and shall be applicable to the PGA Golf Course Tracts and any other part of the Land used for the purposes of a golf course, in the form attached to the Land Use Restrictions. The Golf Course Management Plan establishes the essential parameters for the construction, operation and maintenance of the golf courses and for monitoring of surface water and ground water quality which may be impacted by the golf course(s).

Section 7.02. Construction of Golf Courses.

No construction of any golf course may commence unless the design and construction plan therefor complies with the Golf Course Management Plan. For each golf course to be constructed on the Land, SAWS shall be furnished copies of the final plans and land surveys for the proposed golf course and such additional documentation as SAWS may reasonably request. Not later than forty-five (45) days following receipt of all documentation described in the preceding sentence, SAWS shall either certify in writing that the proposed golf course is in compliance with the requirements of the Golf Course Management Plan or shall have identified deficiencies which must be addressed prior to commencement of construction of such golf course.

Section 7.03. Interpretation of Plan.

The Golf Course Management Plan shall be liberally construed in favor of protecting all surface water and ground water from degradation. Certain provisions of this Development Agreement are intended to supplement the Golf Course Management Plan. In the event of any conflict, the stricter provision set forth therein or in the Development Agreement will control and be enforceable.

Section 7.04. Enforcement of Golf Course Management Plan

City has authorized SAWS to enforce the Golf Course Management Plan, and the Parties agree that (i) until

further notice from City to the contrary, SAWS will enforce the Golf Course Management Plan in accordance with its terms and (ii) upon notice from City to Developer and District, City may directly enforce the Golf Course Management Plan in accordance with its terms. District shall not be required to enforce the requirements imposed by the Golf Course Management Plan.

ARTICLE 8. ROADS AND DRAINAGE IMPROVEMENTS

Section 8.01. Road Construction.

Subject to the requirements and approval required by law from any Government Authority, District or Developer shall be permitted to construct roads upon which its residents and visitors may travel through District by motor vehicle in accordance with the Development Plan. To the extent required by the UDC, the Development Plan shall be amended to reflect the location, character and dimensions of each proposed road not presently shown on the Development Plan. All roadways constructed by District or Developer shall comply with the requirements of the Major Thoroughfare Plan, and shall require the submission of a Water Pollution Abatement Plan in accordance with **Section 2.04**.

Section 8.02. Road Maintenance.

(a) Dedication to County. If accepted by the County, all public roads located within District will be maintained by the County until annexation thereof by City. This does not prohibit District and County from entering into an agreement whereby the County may contract with District to provide maintenance of the public roads.

(b) Maintenance by District. In the event that the County declines to accept the public dedication of the public roads located within District, District shall maintain such roads until such time as City and District may enter into an agreement pursuant to which City shall agree to perform such maintenance obligations of District upon terms and conditions mutually acceptable to City and District. At all times that District retains ownership of the roads, District shall maintain such roads and improvements in substantially the same condition and repair as existed upon final Completion thereof, subject to reasonable wear and tear. The provisions hereof shall survive any termination of this Development Agreement.

Section 8.03. Storm Sewers.

District shall provide adequate measures for the retention, detention and distribution of storm water in accordance with City's regional storm water management programs and Section 35-504 of the UDC.

Section 8.04. Construction Requirements.

Construction of street and drainage improvements shall comply with the requirements of the UDC and shall be at District's sole cost and expense. District shall provide notice to the Director of Public Works of the date construction commences on such improvements undertaken by District. District agrees that the Director of Public

Works, may inspect such construction for the purpose of ascertaining that work complies in material respects with the Development Plan, the approved Water Pollution Abatement Plan therefor and other City requirements. However, District shall assume full responsibility for completing construction of such improvements materially in accordance with the Development Plan, the UDC and this Development Agreement. The provisions hereof shall survive any termination of this Development Agreement with respect to any streets and drainage improvements constructed or under construction prior to the date of such termination.

ARTICLE 9. REPRESENTATIONS AND WARRANTIES

Section 9.01. Representations of Developer.

Developer hereby makes the following representations, warranties and covenants to and with City and District as of the Execution Date unless another date is expressly stated to apply:

(a) Existence. Developer is a corporation duly incorporated and legally existing under the laws of the State of Delaware, and qualified to transact business in the State of Texas.

(b) Authorization. Developer is duly and legally authorized to enter into this Development Agreement and has complied with all laws, rules, regulations, charter provisions and bylaws to which it may be subject and that the undersigned representative is authorized to act on behalf of and bind Developer to the terms of this Development Agreement. Developer has provided to City and District, on or prior to the Execution Date, a certified copy of a resolution of its Board of Directors authorizing Developer's execution of this Development Agreement through Developer Representative, together with documents evidencing Developer's good standing and authority to transact business in the State of Texas. Developer has all requisite power to perform all of its obligations under this Development Agreement. The execution and performance of this Development Agreement by Developer does not require any consent or approval which has not been obtained, including without limitation the consent or approval of any Governmental Authority.

(c) Enforceable Obligations. Assuming due authorization, execution and delivery by each signatory party hereto and thereto, this Development Agreement, all documents executed by Developer pursuant hereto and all obligations of Developer hereunder and thereunder are enforceable in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditor's rights generally and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(d) No Legal Bar. The execution and delivery of this Development Agreement and the performance of its obligations hereunder by Developer will not conflict with any provision of any law, regulation or Governmental Rules to which Developer is subject or conflict with, or result in a breach of, or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which Developer is a party or by which it is bound or any order or decree applicable to Developer.

(e) Litigation. Except such matters which have been disclosed in writing to District and to City, there are

no legal actions or proceedings pending or, to the knowledge of Developer Representative, threatened against Developer which, if adversely determined, would materially and adversely affect the ability of Developer to fulfill its obligations under this Development Agreement or the financial condition, business or prospects of Developer.

(f) Documents. All documents made available by Developer to City and/or City's agents or representatives and/or to District and/or District's agents or representatives prior to the Execution Date, including without limitation the Hotel Development Agreement, PGA Agreement and all financial documents relating to Developer, are true, correct and complete copies of the instruments which they purport to be and accurately depict the subject matter addressed therein.

(g) Hotel Development Agreement. The Hotel Development Agreement will not be terminated or materially amended or modified prior to Hotel Completion Date without notice thereof to City prior to the effective date of such amendment, modification or termination.

(h) Hotel Management Agreement. The Hotel Management Agreement will not be terminated or materially amended or modified, prior to Hotel Completion Date, without notice thereof to City prior to the effective date of such amendment, modification or termination.

(i) PGA Agreement. The PGA Agreement will not be terminated or materially amended or modified without notice describing the nature thereof to City prior to the effective date of such amendment, modification or termination.

(j) Knowledge. Developer has no knowledge of any facts or circumstances which presently evidence, or with the passage of time would evidence, that any of the representations made by Developer or any other Party under this Development Agreement are in any way inaccurate, incomplete or misleading.

(k) Governmental Rules. If acting in the name of or on behalf of District, Developer shall perform such obligations of District in accordance with the terms of this Development Agreement and comply with all Governmental Rules applicable to District and its operations.

Section 9.02. Representations of District.

District hereby makes the following representations, warranties and covenants to and with City and Developer as of the Election Date:

(a) Existence. District has been duly created under the Act.

(b) Authorization. District is duly and legally authorized to enter into this Development Agreement and has complied with all laws, regulations and Governmental Rules to which it may be subject and that the undersigned representative is authorized to act on behalf of and bind District to the terms of this Development Agreement. District has provided to City and District, on or prior to District's execution of this Development Agreement, a certified copy of a resolution of its Board of Directors authorizing District's execution of this Development Agreement through such representative. District has all requisite power to perform all of its obligations under this Development Agreement and the execution and performance of this Development Agreement by District does not require any consent or approval which has not been obtained, including without limitation the consent or approval of any Governmental Authority.

(c) Enforceable Obligations. Assuming due authorization, execution and delivery by each signatory party hereto and thereto, this Development Agreement, each document executed by District pursuant hereto and all obligations of District hereunder and thereunder are enforceable in accordance with their terms.

(d) Litigation. Except such matters which have been disclosed in writing to Developer and to City, there are no legal actions or proceedings pending which, if adversely determined, would materially and adversely affect the ability of District to fulfill its obligations under this Development Agreement.

(e) Knowledge. District has no knowledge of any facts or circumstances which presently evidence, or with the passage of time would evidence, that any of the representations made by District or any other Party under this Development Agreement are in any way inaccurate, incomplete or misleading.

Section 9.03. Representations of City.

City hereby makes the following representations, warranties and covenants to and with Developer and District as of the Execution Date unless another date is expressly stated to apply:

(a) Existence. City is a municipal corporation and home rule city of the State of Texas principally situated in Bexar County.

(b) Power and Authority. City has all requisite municipal corporate power and authority to enter into this Development Agreement and perform all of its obligations hereunder. The execution and performance by City of this Development Agreement has been duly authorized by all necessary City Council action and, except for the additional approval of Developer and District, does not require the consent or approval of any other person which has not been obtained, including, without limitation, any Governmental Authority.

(c) No Legal Bar. The execution and performance by City of this Development Agreement does not and will not violate any provisions of any contract, agreement, instrument or Governmental Rule to which City is a party or is subject.

(d) Litigation. Except such matters which have been disclosed in writing to Developer and to District, there are no legal actions or proceedings pending known to City Representative which, if adversely determined, would materially and adversely affect the ability of City to fulfill its obligations under this Development Agreement.

Section 9.04. Disclaimer of City.

DEVELOPER AND DISTRICT ACKNOWLEDGE THAT, EXCEPT FOR CITY'S REPRESENTATIONS CONTAINED WITHIN THIS DEVELOPMENT AGREEMENT, NEITHER CITY NOR ANY AFFILIATE OF CITY NOR ANY RELATED PARTY OF CITY HAS MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER (WHETHER EXPRESS OR IMPLIED) REGARDING THE PROJECT, THE SUBJECT MATTER OF THIS DEVELOPMENT AGREEMENT OR ANY EXHIBIT HERETO, OTHER THAN THE EXPRESSED OBLIGATIONS CONTAINED IN THIS DEVELOPMENT AGREEMENT. DEVELOPER AND DISTRICT AGREE THAT NEITHER CITY NOR ANY OF CITY'S AFFILIATES AND RELATED PARTIES WILL HAVE ANY RESPONSIBILITY FOR (AND HAVE MADE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO) ANY OF THE FOLLOWING (COLLECTIVELY, THE "DEVELOPMENT RISKS"):

- (a) THE ACCURACY OR COMPLETENESS OF ANY INFORMATION SUPPLIED BY ANY PERSON OTHER THAN CITY'S REPRESENTATIONS UNDER **SECTION 9.03** ABOVE;
- (b) THE COMPLIANCE OF THE PROJECT, THE DEVELOPMENT PLAN OR ANY FEATURE THEREOF AND ANY PROPOSED IMPROVEMENT WITH ANY GOVERNMENTAL RULE; OR
- (c) THE ACCURACY OF ANY FINANCIAL PROJECTIONS, COST ESTIMATES, DEVELOPMENT SCHEDULES OR OTHER MATTERS RELATING TO THE PROJECT OR ANY PUBLIC IMPROVEMENTS REQUIRED TO BE CONSTRUCTED OR FUNDED BY DEVELOPER OR DISTRICT UNDER THE TERMS OF THIS DEVELOPMENT AGREEMENT.

NEITHER CITY NOR ANY OF CITY'S AFFILIATES AND RELATED PARTIES WILL BE LIABLE AS A RESULT OF ANY FAILURE BY ANY PERSON (OTHER THAN CITY) UNDER THIS DEVELOPMENT AGREEMENT (INCLUDING WITHOUT LIMITATION ANY DOCUMENT APPENDED AS AN EXHIBIT TO THIS DEVELOPMENT AGREEMENT) TO PERFORM THEIR RESPECTIVE OBLIGATIONS THEREUNDER. IT IS UNDERSTOOD AND AGREED BY DEVELOPER AND DISTRICT (RESPECTIVELY AND FOR ANY PERSON CLAIMING BY, THROUGH OR UNDER EACH OF THEM) THAT EACH OF THEM HAS BEEN AND WILL CONTINUE TO BE SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL OF AND INVESTIGATION INTO THE LAND, THE PROJECT, THE PUBLIC IMPROVEMENTS AND THE DEVELOPMENT PLAN.

Section 9.05. Reliance.

Each Party recognizes and acknowledges that, in entering into this Development Agreement, (i) all Parties are expressly and primarily relying on the truth and accuracy of the foregoing representations, warranties and covenants of each Party without any obligation to investigate the accuracy or completeness of such representations and covenants, and notwithstanding any investigation thereof by any Party, that such reliance exists on the part of each Party prior to the Execution Date and thereafter until this Development Agreement is or shall be terminated according to its terms; (ii) such representations and covenants are a material inducement to each Party in making this Development Agreement and agreeing to undertake and accept its terms, and (iii) each Party would not be willing to do so in the absence of any of such representations and covenants.

Section 9.06. Covenants of Developer and District.

- (a) Covenants of Developer. Developer covenants and agrees:
 - (i) Golf Course Management Plan. Developer shall observe and perform, or cause to be observed and performed, each of the obligations and requirements of the Golf Course Management Plan. The Golf Course Management Plan imposes requirements reasonably required and designed to protect surface and groundwater resources. Developer confirms that SAWS has and shall exercise the powers of enforcement and authority described in the Golf Course Management Plan.
 - (ii) Open Space Restricted Tracts. Developer shall not encumber, sell, lease or otherwise

divest itself of any interest in any part of the Open Space Restricted Tracts, other than to impose the Conservation Easement and convey the Open Space Restricted Tracts to District in accordance with this Development Agreement, and shall preserve and protect the Open Space Restricted Tracts until conveyance thereof to District in accordance with this Development Agreement, in accordance with the requirements and limitations set forth in the Conservation Easement.

(iii) Fire Station Tract and Trail Head Tract. Developer shall not encumber, sell, lease or otherwise divest itself of any interest in any part of either the Fire Station Tract or the Trail Head Tract, other than to convey such tracts to District in accordance with this Development Agreement, and shall preserve, protect and maintain such tracts until such conveyance thereof to District.

(iv) INDEMNIFICATION BY DEVELOPER DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND THE ELECTED OFFICIALS, MEMBERS, AGENTS, EMPLOYEES, OFFICERS DIRECTORS AND REPRESENTATIVES OF CITY, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER'S ACTIVITIES UNDER THIS DEVELOPMENT AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF DEVELOPER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, DEVELOPER'S EMPLOYEE OR PERSONNEL, CONSULTANT, CONTRACTOR OR SUBCONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, PERSONNEL, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS DEVELOPMENT AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF CITY. DEVELOPER SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY OR DEVELOPER KNOWN TO DEVELOPER RELATED TO OR ARISING OUT OF DEVELOPER'S ACTIVITIES RELATED TO THIS DEVELOPMENT AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT DEVELOPER'S EXPENSE. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS SECTION.

(v) Waiver of Subrogation: With respect to any policies of insurance which may be required to be provided by Developer in connection with this Development Agreement or the construction of the Public Improvements, Developer waives any subrogation rights against City with respect to any claims or damages (including, but not limited to, claims for bodily injury and property damage) which are caused by or result from (i) any risks insured against under any valid collectible insurance contract or policy carried by Developer in force at the time of any such injury and/or damage giving rise to such claim or (ii) any risk that would be covered under any insurance required to be

obtained and maintained by Developer under or pursuant to this Development Agreement, even if such required insurance is not in fact obtained and maintained. This waiver of subrogation is not intended to limit the claims of Developer or City to the face amount or coverage of such insurance policies.

(vi) Waiver of Consequential Damages. Developer waives all present and future claims for consequential damages against City arising from or related to this Development Agreement, and such waiver shall survive any termination of this Development Agreement.

(vii) Release of Existing Claims. Developer hereby releases any and all claims of every kind or character which Developer may have under or pursuant to this Development Agreement against City and its elected officials, members, agents, employees, officers, directors, shareholders and representatives, individually and collectively.

(b) Covenants of District. District covenants and agrees to and with each Party hereto:

(i) Golf Course Management Plan. To the extent that the Golf Course Management Plan is applicable to District's property, District shall observe and perform, or cause to be observed and performed, each of the obligations and requirements of the Golf Course Management Plan. District confirms that SAWS has and shall exercise the powers of enforcement and authority described in the Golf Course Management Plan.

(ii) Open Space Restricted Tracts. District shall not encumber, sell, lease or otherwise divest itself of any interest in any part of the Open Space Restricted Tracts, and shall preserve and protect the Open Space Restricted Tracts and observe all requirements and limitations of the Conservation Easement.

(iii) No Condemnation of Open Space. District shall not take any action to condemn for any purpose any of the Land which is and which will be Open Space in accordance with this Development Agreement, including without limitation, the Open Space Restricted Tracts, the Golf Course/Open Space Tracts or the PGA Golf Course Tracts.

(iv) No Transfer of Utility System. District shall not sell or transfer its utility systems to a public utility other than SAWS or to any private utility, nor transfer any rights under this Development Agreement to any other person or entity without the approval of City Council.

(v) Waiver of Subrogation: With respect to any policies of insurance which may be required to be provided by District in connection with this Development Agreement or the construction of the Public Improvements, District waives any subrogation rights against City with respect to any claims or damages (including, but not limited to, claims for bodily injury and property damage) which are caused by or result from (i) any risks insured against under any valid collectible insurance contract or policy carried by District in force at the time of any such injury and/or damage giving rise to such claim or (ii) any risk that would be covered under any insurance required to be obtained and maintained by District under or pursuant to this Development Agreement, even if such required insurance is not in fact obtained and maintained. This waiver of subrogation is not intended to limit the claims of District or City to the face amount or coverage of such insurance policies.

ARTICLE 10. FINANCING

Section 10.01. Preliminary Funding.

Until Bonds may be issued or Revenues collected by District, District will have insufficient liquidity to perform its obligations under this Development Agreement, to pay Operating and Maintenance Expenses. Developer agrees to either (i) provide to District all necessary funding for this Development Agreement and the obligations of District under this Development Agreement or (ii) to undertake and perform the obligations of District under this Development Agreement in District's behalf, all pursuant to the Reimbursement Agreement.

Section 10.02. Plan of Financing.

Pursuant to the Act, District has the right to incur, from time to time, contractual obligations of indebtedness, including the issuance of Bonds, to fund Public Improvements and to provide for the payment or repayment of the costs and expenses of the initial establishment and administration of District and professional services in connection with the issuance of Bonds. District agrees to restrict the purposes for which District may incur indebtedness to those purposes set forth in **Section 10.03**, and District also agrees that all indebtedness incurred by District shall comply with the covenants and conditions set forth in this ARTICLE 10. District shall obtain the prior, written approval of City Council for any indebtedness to be incurred by District which is not expressly authorized under the terms of this ARTICLE 10. District may incur indebtedness as described herein in the form of Senior Bonds, Subordinate Bonds, Inferior Debt and Reimbursement Agreements.

Section 10.03. Approved Purposes.

Unless otherwise approved by City Council, Bonds and Inferior Debt may be incurred by District only to provide funds for the following purposes:

- (a) Organizational Expenses. To finance costs and expenses necessarily incurred in the initial establishment and initial administration of District subject to the limitations set forth in 30 TAC §293.44.
- (b) Public Improvements. To purchase and/or construct, or to purchase and/or construct under contract with Developer or otherwise acquire, the Public Improvements.
- (c) Open Space Restricted Tracts. To acquire the Open Space Restricted Tracts from Developer in accordance with **Section 4.01**.

Section 10.04. General Limitations on Bonds.

- (a) Bond Issuance Prohibition: No Bonds may be issued until the Hotel Completion Date.
- (b) Voter Approval. The qualified voters of District shall approve the issuance of the Bonds and the Inferior Debt in an election initiated or ordered by District for such purpose.
- (c) Bond Optional Redemption Provisions. District shall reserve the right to redeem Bonds on any date not later than the tenth (10th) anniversary of the issuance date of the subject Bonds at a price equal to the par value of the Bonds plus premium, if any, and accrued interest to the redemption date.

(d) Bond Extraordinary Redemption Revisions. The Bonds shall be subject to mandatory redemption at a redemption price equal to the principal amount thereof, plus accrued interest, if any, to the redemption date, plus premium at a price not to exceed 105% of the par amount of the Bonds to be redeemed. Such extraordinary redemption may be exercised by City at any time prior to the tenth (10th) anniversary date after the issuance of the Bonds but no earlier than the tenth (10th) anniversary date of the Hotel Completion Date, in the event City elects to annex the Land prior to Discharge of the Bonds.

(e) Method of Sale. The Bonds, at the option of District, may be sold pursuant to a competitive sale, negotiated sale, private placement or any combination thereof.

(f) Interest Rate. The net effective interest rate on Bonds, taking into account any discount or premium as well as the interest rate borne by such Bonds, will not exceed two percent (2%) above the highest average interest rate reported by the Daily Bond Buyer in its weekly "25 Revenue Bond Buyer's Index" during the one month period next preceding the date District adopts its resolution authorizing the issuance of Bonds.

(g) Bond Payments. Interest on all Bonds shall be payable semiannually and principal of all Bonds shall be payable semiannually or annually on February 15 and/or August 15 of each calendar year.

(h) Bond Maturity. All Bonds shall be evidenced by an instrument which provides that all indebtedness evidenced thereby will be fully due and payable no later than twenty (20) years following January 2 of the calendar year next succeeding the Hotel Completion Date.

(i) Reserve Fund. To the extent permitted by law, District shall provide a reserve fund for all Bonds equal to the average Annual Debt Service Requirements on all outstanding Bonds with cash (provided by proceeds of Bonds or Revenues) or a surety bond.

Section 10.05. Authorized Debt Obligations of District.

(a) Senior Bonds. Senior Bonds may be issued by District for Public Improvements only if such Senior Bonds comply with the requirements set forth in this **Subsection 10.05(a)** and otherwise comply with this ARTICLE 10, and if issued for a Public Improvement under the jurisdiction of the TNRCC, the required approval of the TNRCC is obtained in compliance with 30 TAC §§293.41 - 293.61 (as now in effect or as hereafter amended).

(i) Initial Issue of Senior Bonds. For the initial issuance of Senior Bonds, District's Fiscal Consultant shall prepare and deliver to District, Developer and City a comprehensive proforma financial analysis to the effect that, based upon information received from various sources by the Fiscal Consultant, that (i) District has reasonably estimated the Revenues to be received by District during the next succeeding Fiscal Years and (2) such estimated Revenues, calculated at growth rates consistent with comparable City models, to be received by District are projected to be at least equal to 1.25 times the average Annual Debt Service Requirements of such Senior Bonds through the final maturity thereof.

(ii) Additional Senior Bonds. For each subsequent issue of Senior Bonds:

(1) An independent certified public accountant, or independent firm of certified public accountants, acting by and through a certified public accountant, shall execute and deliver to District, Developer and City

a written certificate to the effect that, during the next preceding Fiscal Year, the Revenues were (A) at least 1.25 times an amount equal to the average Annual Debt Service Requirements of all Senior Bonds and (B) at least 1.10 times an amount equal to the average Annual Debt Service Requirements on all Bonds then issued and outstanding during such Fiscal Years; and

(2) The Fiscal Consultant shall prepare and deliver to District, Developer and City a comprehensive proforma financial analysis to the effect that, based upon the information received from various sources by such Fiscal Consultant, District has reasonably estimated the Revenues to be received by District during the next succeeding Fiscal Years and such estimated Revenues, calculated at growth rates consistent with comparable City models or at historical trends not to exceed five percent (5%), will be (A) at least equal to 1.25 times an amount equal to the average Annual Debt Service Requirements of all Senior Bonds (including, without limitation, the subject Senior Bonds) for such next succeeding Fiscal Years and (B) at least equal to 1.10 times an amount equal to the average Annual Debt Service Requirements of all Bonds, including the Senior Bonds proposed to be issued, during such next succeeding Fiscal Years. If there has been any increase in the rates or charges, which is then in effect, but which was not in effect during all or any part of the period for calculation, the above referenced comprehensive proforma financial analysis may include the financial benefit rated to the increase in the rate or charges.

(b) Subordinate Bonds. Subordinate Bonds may be issued for an authorized purpose only if such Subordinate Bonds comply with the requirements set forth in this **Subsection 10.05(b)** and otherwise comply with this ARTICLE 10.

(i) Initial Issue of Subordinate Bonds. For the initial issuance of Subordinate Bonds, District's Fiscal Consultant shall prepare and deliver to District, Developer and City a comprehensive proforma financial analysis to the effect that, based upon the information received from various sources by the Fiscal Consultant, (i) District has reasonably estimated the Revenues to be received by District during the next succeeding Fiscal Years, and (ii) the projected Revenues, as defined and described in **Subsection 10.05(a)(1)**, estimated to be received by District on the Senior Bonds will be at least equal to 1.25 times the average Annual Debt Service Requirements, and on the Subordinate Bonds, will be at least equal to 1.10 times the average Annual Debt Service Requirements of all Bonds.

(ii) Additional Subordinate Bonds. For each subsequent issue of Subordinate Bonds:

(1) An independent certified public accountant, or independent firm of certified public accountants, acting by and through a certified public accountant, shall execute and deliver to District, Developer and City a written certificate to the effect that, during the next preceding Fiscal Year, the Revenues, as defined and described in **Subsection 10.05(a)(i)**, were at least 1.10 times an amount equal to the average Annual Debt Service Requirements of the all Bonds during such preceding Fiscal Year; and

(2) The Fiscal Consultant shall prepare and deliver to District, Developer and City a comprehensive proforma financial analysis for City to the effect that, based upon the information received from various sources by the Fiscal Consultant, (A) District has reasonably estimated the Revenues to be received by District during the next succeeding Fiscal Years and (B) such estimated Revenues, calculated at growth rates consistent with comparable City models or at historical trends not to exceed five percent (5%), on the Senior Bonds will be at least equal to 1.25

times the average Annual Debt Service Requirements of all Senior Bonds for such next succeeding Fiscal Years and at least equal to 1.10 times the average Annual Debt Service Requirements of all Bonds during such next succeeding Fiscal Years. If there has been any increase in the rates or charges, which is then in effect, but which was not in effect during all or any part of the period for calculation, the above referenced comprehensive proforma financial analysis may include the financial benefit rated to the increase in the rate or charges.

(c) Inferior Debt. District may privately place any forms of indebtedness with Developer, which will not be required to meet or comply with an historical and/or projected additional bonds test.

(d) Reimbursement Agreements. District may enter into Reimbursement Agreement(s) with Developer for an authorized purpose in accordance with **Section 10.03** and for Operation and Maintenance Expenses, pursuant to which Developer advances funds to District. Such Reimbursement Agreements are authorized by this Development Agreement only to the extent that such Reimbursement Agreements comply with the requirements set forth in this **Subsection 10.05(d)** and otherwise comply with this ARTICLE 10.

(i) Prohibition on Compounded Interest. The obligation of District to reimburse or pay to Developer interest will be limited to the payment of accrued interest on funds advanced by Developer and shall not include any obligation by District to reimburse or pay to Developer compounded interest on such advances.

(ii) Extinguishment of Obligation. All Inferior Debt and reimbursement obligations of District to Developer shall terminate as of the date on which this Development Agreement terminates, whether on the date described in **Section 15.02** hereof or upon any the exercise by City of any right to terminate this Development Agreement under ARTICLE 14 hereof, and shall be fully canceled as of such date.

Section 10.06. Priority of Payment of District Debt.

All documents authorizing or evidencing Bonds, Inferior Debt or Reimbursement Agreements shall include covenants which establish the priority of application of Revenues of District in payment of District's indebtedness as follows:

(a) Senior Bonds. Revenues in each Fiscal Year shall be credited first to payment of the Annual Debt Service Requirements of all issues of Senior Bonds during such Fiscal Year and all other payments to come due on all Senior Bonds in such Fiscal Year.

(b) Subordinate Bonds. Revenues in each Fiscal Year shall be credited second to payment of the Annual Debt Service Requirements of all issues of Subordinate Bonds during such Fiscal Year and all other payments to come due on all Subordinate Bonds in such Fiscal Year.

(c) Administrative Expenses. Revenues in each Fiscal Year shall be credited third to payment of all necessary and reasonable current expenses of District in administering and operating District and maintaining and repairing District property.

(d) Inferior Debt. Revenues in each Fiscal Year shall be credited fourth to payment of the Annual Debt Service Requirements of all issues of Inferior Debt during such Fiscal Year and all other payments to come due on all Inferior Debt in such Fiscal Year.

(e) Reimbursement Agreement(s). Revenues in each Fiscal Year shall be credited fifth to payment

of the current payment obligations of District under Reimbursement Agreements as described in **Subsection 10.05(d)** above.

Section 10.07. Allocation of Revenues; Required Pledge of Ad Valorem Taxes.

District may pledge all or any portion of the Revenues to any series of Bonds in its discretion so long as the limitations in **Sections 10.04** and **10.05** are met; provided, however, that ad valorem taxes, without legal limitation as to rate or amount, shall be pledged to all Bonds.

Section 10.08. Amount of Tax Levied.

At all times, District shall levy ad valorem taxes, hotel occupancy taxes and sales taxes at rates at least equal to City rates for such taxes, unless prohibited by law.

ARTICLE 11. DISTRICT OPERATIONS

Section 11.01. Assessment and Collection of Taxes and Fees.

Taxes and fees for the payment of District's obligations described in ARTICLE 10 shall be assessed, levied, and collected as follows:

(a) Hotel Occupancy Tax. District shall require hotels located within District to be responsible for the collection of all hotel occupancy taxes levied by District as described in Chapter 351, Texas Tax Code as if District were a municipality. Each hotel shall be responsible for the remittance of such hotel occupancy tax to the proper recipients. Each hotel shall remit the portion of the hotel occupancy tax allocated to District directly to District and shall remit those portions of the hotel occupancy tax allocated to the State and the County to their respective recipients.

(b) Sales and Use Tax. District shall require retailers operating within District to collect sales and use taxes levied by District and shall remit such collected taxes to the State Comptroller in accordance with state law.

(c) Ad Valorem Tax. The assessment of the Land and other taxable property in District shall be conducted by the Bexar County Appraisal District. District shall levy and shall be responsible for the collection of the ad valorem taxes levied by District on taxable property within District.

(d) Assessments. District may require property owners to pay special assessments to District after complying with all legal requirements.

(e) Impact Fees. District may establish, charge, and collect impact fees payable to District in addition to, but not in lieu of, the impact fees to be paid to City in accordance with the UDC or this Development Agreement and to be paid to SAWS in accordance with the Water Commitment, the Sewer Contract or this Development Agreement.

Section 11.02. Annual Budget.

Not less than thirty (30) days prior to adoption of any annual budget by its Board of Directors, District shall provide to City Representative a copy of District's proposed annual budget. The proposed annual budget shall be in accordance with Governmental Rules and shall set forth the anticipated Revenues and other income of District and the

Operating and Maintenance Expenses, the Annual Debt Service Requirements, the amounts necessary to pay the Inferior Debt, the amounts payable under any Reimbursement Agreement(s) and all other anticipated expenses. Any comments by City concerning the proposed budget shall be transmitted in writing to District Representative not less than ten (10) days prior to the adoption of the budget.

Section 11.03. Construction Covenants for Certain Public Improvements.

District covenants and agrees that all construction undertaken by or on behalf of District with respect to the Public Improvements, other than water and wastewater projects covered by ARTICLE 5 and ARTICLE 6 of this Development Agreement, will be in accordance with the approvals required under this Development Agreement and the applicable standards and specifications of City. Prior to the construction of such Public Improvements, District shall give written notice to the City Representative and to the Director of Public Works, stating the date that such construction will be commenced. During the progress of the construction and installation of such Public Improvements, the Director of Public Works, or an employee thereof, may make periodic on-the-ground inspections.

Section 11.04. Certain Reimbursement Obligations of District.

District shall not have any duty to Developer to ensure that there are sufficient Revenues for reimbursement to Developer, other than District's customary activities to collect Revenues, and District shall have no liability to Developer of any kind if there are insufficient Revenues for reimbursement.

Section 11.05. Additional Tracts Bound by Development Agreement.

District shall not at any time increase the land subject to the jurisdiction of the District, whether or not such additional land is contiguous to the Land, unless District (i) has submitted to City all information related to such expansion as may be requested by City and (ii) has obtained the express approval thereof from City Council.

Section 11.06. Scope of Authority to Provide Power Service.

District's authority to plan, design, construct, improve and maintain power facilities or services is limited to those facilities and services necessary to provide back-up or auxiliary power to critical functions of District's water or wastewater operations. District shall not provide retail or wholesale electric energy service or electric distribution service to District residents or others. District shall not, whether acting on its own behalf or through any other intermediaries or agents, utilize any authority it may have to plan, design, construct, improve or maintain power facilities or services to provide retail or wholesale electric energy service or electric distribution service to inhabitants of the Land or others within District's jurisdiction or otherwise. Notwithstanding the foregoing, District may undertake or authorize electric infrastructure improvements of the type and nature traditionally within the scope of a real estate developer's responsibility.

Section 11.07. Enforcement of City Ordinances.

Notwithstanding any authorization given to District under the Act to enforce certain City ordinances, District shall not undertake such enforcement so long as City shall continue to enforce such ordinances.

ARTICLE 12. SUBDISTRICTS

Section 12.01. Timing.

District shall be permitted to divide itself into two or more Subdistricts pursuant to and in accordance with this ARTICLE 12, subject to the prior approval of City Council. District shall determine when and if to divide into one or more Subdistricts based on its need, in its discretion. District, upon deciding that the creation of a Subdistrict is required, shall provide a "Notice of Intent to Subdivide" to City, which shall include:

- (a) reference to this Development Agreement;
- (b) a description of the circumstances supporting District's desire to divide into Subdistricts;
- (c) a description of the proposed division of District into the particular Subdistricts; and
- (d) the proposed respective allocations of debt and other obligations among the Subdistricts.

Section 12.02. Allocation of Debt and Property. Upon the creation by District of two or more Subdistricts by division of District, each Subdistrict shall be governed by the terms of this Development Agreement. Each Subdistrict shall be responsible for its proportionate share of debt and other obligations related to the costs of the infrastructure and development of District as a whole as set forth in the Notice of Intent to Subdivide, or as otherwise agreed by City and District, as applicable.

ARTICLE 13. ANNEXATION

Section 13.01. Timing.

City agrees to defer the exercise of its authority to annex the Land for a period of time ending on the earlier to occur of (a) ten (10) years from January 2 of the year following the Hotel Completion Date, or (b) termination of this Development Agreement for any reason other than a default hereunder by City. At such time as City may annex the Land under the terms of the preceding sentence and elects to do so, City may defease the Bonds, or if the Bonds are then subject to optional redemption, redeem the Bonds upon such annexation.

Section 13.02. Notice.

City shall provide written notice to Developer and District of its intent to annex the Land in accordance with applicable law, subject to **Section 13.04**.

Section 13.03. Effect of Annexation of the Land.

Upon annexation of the Land by City, District shall cease to exist. Upon such annexation, all remaining

property of District (including all receivables) will pass to and become the property of City without charge or lien, all Bonds will become obligations of City, and all Inferior Debt and Reimbursement Agreements shall be canceled and shall not become the obligations of City. The provisions hereof shall survive termination of this Development Agreement.

Section 13.04. Voluntary Annexation.

District and Developer consent to annexation by City upon any termination of this Development Agreement for any reason other than a default by City. Should such termination occur, City may undertake such annexation without further notice to or consent by District or Developer, each of which hereby irrevocably waive any and all legal requirements applicable to such annexation to the fullest extent permitted by law; provided, however, Developer does not thereby waive any vested development rights it has or may have with respect to the Land. The provisions hereof shall survive any such termination of this Development Agreement.

Section 13.05. Release of Reimbursement Rights by Developer.

Upon City's annexation of the Land, following the termination of this Development Agreement due to a Termination Event caused by Developer or District, Developer hereby irrevocably waives, relinquishes and fully releases any and all right of payment or reimbursement from City authorized by contract or by law, including (without implied limitation) the rights described in Section 43.0715, Texas Local Government Code. The provisions hereof shall survive any such termination of this Development Agreement.

ARTICLE 14. TERMINATION EVENTS, BREACH, AND REMEDIES

Section 14.01. Termination Events.

The Parties acknowledge that certain obligations and requirements of this Development Agreement are of fundamental importance to the certain Parties, such that the breach thereof justifies the termination of this Development Agreement. The occurrence of an Automatic Termination Event, as identified in **Subsection 14.01(a)**, will result in the automatic termination of this Development Agreement. The occurrence of a Termination Event which gives rise to the option of a Party to terminate this Development Agreement, as identified in **Subsections 14.01(b), 14.01(c) and 14.01(d)** below, will result in the termination of this Development Agreement on the thirtieth (30th) day following notice by such Party to each other Party, given in accordance with **Section 17.01** of this Agreement, that the remedy of termination of this Development Agreement has been elected by such Party, unless such Termination Event, if capable of being cured, is cured to the reasonable satisfaction of the Party giving such notice of termination within such thirty (30) day period. If such curable Termination Event cannot reasonably be cured within such 30-day period, the defaulting Party must initiate efforts to cure such Termination Event within such thirty (30) day period and diligently and continuously pursue its efforts to cure such Termination Event thereafter until such cure is accomplished, not to exceed a total of one hundred twenty (120) days. If such cure is not accomplished within said one hundred twenty (120) day period, this Development Agreement will terminate. The Parties agree that the following events are Termination Events for the purposes of this

Development Agreement:

(a) Automatic Termination Events.

(i) If held, the Confirmation Election fails to confirm the establishment of District in accordance with the Act.

(ii) Failure by Developer to convey to City the Conservation Easement prior to the date on which Developer has conveyed to District the Open Space Restricted Tracts.

(iii) The entry of a non-appealable ruling by a court of competent jurisdiction that District is terminated, was not formed according to law, or any action of District is beyond the authority conferred upon District by any applicable Governmental Rules.

(b) Termination Events at the Option of any Party.

(i) Failure of District to hold the Confirmation Election on or before September 14, 2002, unless (1) such failure is due to the filing of a legal proceeding which restrains or enjoins the holding of such election, (2) such legal proceeding is diligently contested by District and (3) such legal proceeding results in a final, non-appealable judgment which permits the Confirmation Election to be held not later than December 31, 2004.

(ii) The filing of any legal proceeding to contest the validity of the creation of District, any matter affecting the Confirmation Election, or the validity or enforceability of this Development Agreement, which proceeding is either (1) concluded by a final non-appealable determination adverse to District, or (2) not concluded on or before a date which would permit the Confirmation Election to be held before December 31, 2004.

(c) Termination at Option of City. City may elect to terminate this Development Agreement upon any of the following events upon notice to Developer and District:

(i) At any time prior to the Confirmation Election.

(ii) Failure of Developer to sign, acknowledge and record in the Official Records the Land Use Restrictions on or prior to the Execution Date.

(iii) Failure by Developer to timely achieve each of the Milestones.

(iv) Failure by District to execute and ratify the Escrow Agreement.

(v) Failure of Developer to convey to District the Open Space Restricted Tracts on or before the date specified in **Subsection 1.02(c)**, and in compliance with the terms and conditions and with the approvals set forth therein.

(vi) Failure of Developer to convey to District the Fire Station Tract and the Trail Head Tract on or before the Hotel Completion Date, upon the terms and conditions and with the approvals set forth in **Subsection 1.02(d)**.

(vii) Failure of City to receive the leasehold described in the Trail Head Lease or the Fire Station Lease on or before the Hotel Completion Date.

(viii) Use by Developer or District (including permission granted to any third party for such use) of the Trinity Wells in any manner not expressly authorized by this Development Agreement.

(ix) Use by Developer of the Open Space Restricted Tracts in a manner which would breach the

Conservation Easement, prior to the effective date thereof.

(x) A breach of the Golf Course Management Plan which authorizes City's termination of this Development Agreement., according to the terms of such Golf Course Management Plan.

(xi) Failure by District or Developer to undertake, perform and Complete the Public Improvements in accordance with ARTICLE 3 of this Development Agreement and substantially in accordance with the Development Schedule, for any reason other than a Force Majeure Event or fault of City.

(xii) Failure by Developer or District, as applicable, to deliver to City any Letter of Credit or replacement Letter of Credit required to be provided under this Development Agreement.

(xiii) A condemnation action undertaken by District with respect to the Open Space Restricted Tracts, the Fire Station Tract or the Trail Head Tract.

(d) Termination at Option of Developer. Developer may terminate this Development Agreement at any time prior to Hotel Completion Date.

Section 14.02. Effect of Termination Under Section 14.01.

Upon the termination of this Development Agreement upon any Termination Event described in **Section 14.01** above,

(a) This Development Agreement shall terminate in all respects other than with respect to those matters which survive termination as expressly stated in this Development Agreement.

(b) If termination of this Development Agreement occurs prior to Hotel Completion Date by City, the Land Use Restrictions shall survive such termination according to the terms thereof.

(c) City may draw under the Letters of Credit (or any replacement thereof) in accordance with this Development Agreement, if issued.

(d) All Inferior Bonds and Reimbursement Agreements and all other reimbursement rights of Developer will be canceled.

(e) Each Party will have the right to pursue all other or additional remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus.

No remedy stated herein is an exclusive remedy and pursuit of any remedy is not an election of remedies precluding the availability of any other remedy. No failure to exercise any remedy hereunder will effect a waiver of such remedy.

Section 14.03. Material Breach of Development Agreement.

(a) Breach by City. A material breach of this Development Agreement by City (other than a Termination Event) shall be deemed to have occurred in the following instances within thirty (30) days after notice from Developer's Representative (or his/her designee) or from District's Representative (or his/her designee) of such failure; provided, however, that if such performance or observance cannot reasonably be accomplished within such thirty (30) day period, then no breach shall occur unless City fails to commence such performance or observance within such thirty (30) day period and fails to diligently prosecute such performance or observance to conclusion thereafter; and provided,

further, however, that if such performance or observance has not been accomplished within forty-five (45) days after the initial notice of material breach (notwithstanding City's diligent prosecution of its curative efforts), exclusive of a Force Majeure Event:

(i) the imposition or attempted imposition of any moratorium on building or growth within District;

(ii) an attempt by City to annex the Land prior to the time when annexation is permitted under this Development Agreement; and

(iii) the condemnation of any part of the Land; and

(iv) the failure by City to substantially perform or substantially observe any of the obligations, covenants and agreements to be performed or observed by City under this Development Agreement. unless prevented by an unreasonable action of Developer or District.

(b) Breach by Developer. A material breach of this Development Agreement by Developer (other than a Termination Event) shall be deemed to have occurred in the following instances within thirty (30) days after notice from the City's Representative (or his/her designee) or from District's Representative (or his/her designee) of such failure; provided, however, that if such performance or observance cannot reasonably be accomplished within such thirty (30) day period, then no breach shall occur unless Developer fails to commence such performance or observance within such thirty (30) day period and fails to diligently prosecute such performance or observance to conclusion thereafter; and provided, further, however, that if such performance or observance has not been accomplished within forty-five (45) days after the initial notice of material breach (notwithstanding Developer's diligent prosecution of its curative efforts), exclusive of a Force Majeure Event:

(i) The failure by Developer to substantially perform or substantially observe any of the obligations, covenants or agreements to be performed or observed by Developer under this Development Agreement, unless prevented by an unreasonable action of City;

(ii) If a transfer occurs in violation of **Sections 15.05 or 15.06** of this Development Agreement;

or

(iii) The knowing and intentional submission by Developer or any Developer's Representative of a report, application or certificate which contains any materially false or misleading statements.

(c) Default by District. A material breach of this Development Agreement by District (other than a Termination Event) shall be deemed to have occurred in the following instances within thirty (30) days after notice from the City's Representative (or his/her designee) or from Developer's Representative (or his/her designee) of such failure; provided, however, that if such performance or observance cannot reasonably be accomplished within such thirty (30) day period, then no breach shall occur unless District fails to commence such performance or observance within such thirty (30) day period and fails to diligently prosecute such performance or observance to conclusion thereafter; and provided, further, however, that if such performance or observance has not been accomplished within forty-five (45) days after the initial notice of material breach (notwithstanding District's diligent prosecution of its curative efforts), exclusive

of a Force Majeure Event:

- (i) The failure by District to substantially perform or substantially observe any of the obligations, covenants or agreements to be performed or observed by District under this Development Agreement, unless prevented by an unreasonable action of City;
- (ii) The entry of a non-appealable ruling by a court of competent jurisdiction that District is terminated or was not formed according to law or that any actions taken by District are beyond the authority conferred upon District by any Governmental Rules.
- (iii) The knowing and intentional submission by District or any District's Representative of a report, application or certificate which contains any materially false or misleading statements.
- (vi) If District fails to permit OIR to conduct an audit authorized by this Development Agreement, or having commenced such audit, to permit City to complete the same without its efforts being impeded by District or its agent(s), following seven (7) days' written notice from City to District of such failure.

Section 14.04. Remedies of City For A Material Breach By Developer or District Under Section 14.03.

- (a) Scope. After expiration of any cure period and delivery of any required notice, City may pursue, at its option and without prejudice to any other rights and remedies provided for hereunder or by law, any right or remedy conferred upon or reserved to City under law, this Development Agreement, and/or any written guaranty provided to City under the terms of this Development Agreement.
- (b) Remedies Cumulative. The rights and remedies provided to City in this Development Agreement shall be in addition to and cumulative of all other rights and remedies available to City against Developer or District as applicable, upon an uncured material breach of this Development Agreement by Developer or District, and City will have the right to pursue all such other or additional remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus.

Section 14.05. Remedies of Developer and District For A Material Breach By City Under Section 14.03.

- (a) Scope. District or Developer may pursue, at each such Party's option, without prejudice to any other rights and remedies provided for hereunder or by law, any right or remedy conferred upon or reserved to Developer or District under law, this Development Agreement, and/or any written guaranty provided by Developer under the terms of this Development Agreement.
- (b) Remedies Cumulative. The rights and remedies provided to Developer and District in this Development Agreement shall be in addition to and cumulative of all other rights and remedies available to District or Developer, as applicable, upon an uncured material breach of this Development Agreement by City, and Developer or District will have the right to pursue all such other or additional remedies, whether the same be remedies at law and/or equitable remedies, including injunction and relief in the form of mandamus.

Section 14.06. Mediation.

In the event of a dispute by the Parties to this Development Agreement which cannot, within a reasonable time, be resolved, the Parties agree to submit the disputed issue to non-binding mediation. The Parties shall participate in good faith, but in no event shall they be obligated to pursue mediation that does not resolve the issue within seven (7) days after the mediation is initiated or fourteen (14) days after mediation is requested. The Parties participating in the mediation shall share the costs of the mediation as follows: one-third (1/3rd) paid by City, one-third (1/3rd) paid by District and one-third (1/3rd) paid by Developer. The provisions hereof shall survive any termination of this Development Agreement with respect to any mediation proceedings instituted prior thereto.

Section 14.07. Effect of Termination on District.

Upon termination of this Development Agreement after the Election Date, District shall not incur any debt, shall not levy or collect any taxes and shall not take any further actions without approval of City Council. District will be a financially dormant district for the purposes of Section 49.147 of the Texas Water Code and shall thereafter be dissolved in accordance with Section 49.321 of the Texas Water Code. If this Development Agreement is terminated for any reason other than a default hereunder by City, all reimbursement obligations of District to Developer will be rendered thereby void and unenforceable. The provisions of this **Section 14.07** shall survive any termination of this Development Agreement.

Section 14.08. Survival of Development Restrictions.

Upon termination of this Development Agreement after the Hotel Completion Date, all development restrictions imposed pursuant to either this Development Agreement or to any exhibit to this Development Agreement shall fully survive such termination until such time as City may annex all of the Land.

ARTICLE 15. BINDING AGREEMENT, TERM, AMENDMENT, AND ASSIGNMENT

Section 15.01. Beneficiaries.

This Development Agreement shall bind and inure to the benefit of the Parties, their successors and assigns. The terms of this Development Agreement shall bind the Parties. A memorandum of this Development Agreement shall be recorded in the County Clerk Official Records of Bexar County, Texas.

Section 15.02. Term.

This Development Agreement shall commence and bind the Parties on the Election Date and continue until a date which is exactly twenty (20) years from the earlier to occur of (i) December 31, 2006, or (ii) January 2 of the year following the Hotel Completion Date, unless terminated on an earlier date pursuant to other provisions of this Development Agreement or by express written agreement executed by the Parties.

Section 15.03. Termination.

In the event this Development Agreement does not take effect due to termination pursuant to the provisions hereof, or is terminated by mutual agreement of the Parties or other event, the Parties shall promptly execute and file of record, in the County Clerk Official Records of Bexar County, a document confirming the termination of this Development Agreement, and such other documents as may be appropriate to reflect the basis upon which such termination occurred.

Section 15.04. Audit.

District will provide to City such financial reports and any other financial information which may be reasonably requested by City from time to time and which are not protected information under applicable law. All such financial reports and any and all other financial information or reports reasonably required by City will be made available to City and its designee for purposes of audit by OIR. District agrees to provide certain information on a timely basis to OIR for purposes of City's determination by audit that District is in apparent compliance with the terms of this Development Agreement. All applicable books, records and information of District, together with all supporting documentation generated directly or indirectly because of this Development Agreement, shall be preserved by District in Bexar County, Texas, for five (5) years after the period to which they relate or until all audits, if any, relating to those documents are complete and any and all findings have been resolved fully, and any litigation shall be finally resolved, whichever is the greater period of time. City, if it elects, has the right to require that any or all of such books, records, and information be submitted for audit to City or to a Certified Public Accountant selected by City, or any other City designee. The provisions hereof shall survive any termination of this Development Agreement.

Section 15.05. Assignment.

The Parties shall not assign (partially or in the entirety) any rights under this Development Agreement without prior written consent of each other Party, such consent to not be unreasonably withheld.

Section 15.06. Transfer of Control of Developer.

Developer understands and acknowledges that the rights and duties of Developer as set forth in this Development Agreement are personal to Developer and that City has entered into this Development Agreement in reliance upon the business skills, financial resources and reputation of Developer. Accordingly, until the Hotel Completion Date, no Developer Entity may complete a Developer Transfer except in accordance with the provisions set forth in **Subsection 15.06(a)** below. Any purported Developer Transfer, by operation of law or otherwise, not in accordance with **Subsection 15.06(a)**, as applicable, shall be null and void and shall constitute a material breach of this Development Agreement by Developer.

(a) Developer Transfer Prior to Hotel Completion Date. Prior to the Hotel Completion Date, a Permitted Transfer by a Developer Entity shall be permitted without the prior, written consent of City. Any Developer Transfer that is not a Permitted Transfer shall require prior, written consent of City. For the purposes of this **Section 15.06**, a

“Permitted Transfer” means one of the following: (a) any Developer Transfer which, when combined with all other transfers which occurred in the twelve (12) months immediately preceding such Developer Transfer, is of less than a “controlling interest” (herein defined) in that Developer Entity; (b) any Developer Transfer of more than a controlling interest in a Developer Entity which does not result in a “substantial change in the management” (herein defined) of Developer Entity for a period of twelve (12) months after the effective date of the Developer Transfer; or (c) any Developer Transfer to the shareholders of any publicly held corporation which now owns more than fifty-one percent (51%) of the stock in Developer, or (d) any Developer Transfer resulting from any merger, consolidation or reorganization of Temple-Inland, Inc. involving all or substantially all of its shares or properties; (e) any Developer Transfer resulting from a sale of substantially all of the properties of Temple-Inland, Inc.; (f) any Developer Transfer to a transferee that has a net worth or shareholders’ equity of _____ Million Dollars (\$ _____) ; (g) any Developer Transfer after all of the Letters of Credit have been provided in accordance with this Development Agreement. Further, for the purposes hereof, the phrase **“substantial change in the management”** means the departure, divestiture or re-assignment of individual(s) presently in the management of the Developer who, prior to such departure, divestiture or re-assignment (actual or de facto) were able to direct or cause the direction of the actions and policies of the Developer Entity, whether acting singly or in unison with others, and who, following such departure, divestiture or re-assignment, no longer possess such ability or authority.

(b) Developer Transfer After Hotel Completion Date. After the Hotel Completion Date, there shall be no requirement to attain any type of approval of City for any Developer Transfer.

(c) Approvals. For any Developer Transfer, prior to such Developer Transfer, Developer shall provide to City a written notice and explanation in reasonable detail of each Developer Transfer, and shall provide on a timely basis such additional information as City may reasonably require in order to determine whether the applicable criteria in **Subsection 15.06(a)** has been satisfied. For any Developer Transfer requiring City’s prior approval, within thirty (30) days after City’s receipt of the foregoing information, City shall advise Developer of its approval or disapproval of the requested Developer Transfer and if City disapproves the request, City shall specify the reasons for such disapproval. City agrees it shall not unreasonably withhold its approval.

Section 15.07. Restrictions on Sale.

Neither Developer nor District shall transfer, sell, encumber, lease or convey any Open Space Restricted Tract or any Golf Course/Open Space Tracts (other than as described in or contemplated by this Development Agreement), or any portion thereof or interest therein, without the prior, written consent of City Council, and any attempted conveyance of any of such properties shall be void and of no legal effect. A memorandum of this Development Agreement shall reflect the restrictions set forth in this **Section 15.07**, and may be filed for record by City in the Real Property Records of Bexar County, Texas.

ARTICLE 16. CAPACITY OF CITY

Section 16.01. City Council Approval.

Notwithstanding anything to the contrary set forth in this Development Agreement, District and Developer recognize and agree that any contracts or agreements contemplated to be entered into by City under the terms of this Development Agreement which are entered into after the date of this Development Agreement will be subject to the prior approval of the City Council, if the approval of the City Council is required under the terms of City's Charter or other applicable law.

Section 16.02. Capacity of City .

(a) Without in any way limiting or exercising the obligation, duties, covenants and agreements of City as a Party to this Agreement, the Parties agree that any action, omission or circumstance arising out of the exercise or performance of City's required Governmental Functions shall not cause or constitute a default by City under this Development Agreement or any other Project document or give rise to any rights or claims for damages or injury against City in its capacity as a party to the Development Agreement. For purposes of this **ARTICLE 16, "Governmental Function"** means any regulatory, legislative, permitting, zoning, enforcement (including police power), licensing or other functions which City is authorized or required to perform in its capacity as a Governmental Authority. Developer's remedies for any injury, damage or claim resulting from any other action, omission or circumstance shall be governed by the laws and regulations concerning claims against City as a charter city and governmental entity. The provisions hereof shall survive any termination of this Development Agreement.

(b) No set-off, reduction, withholding, deduction or recoupment shall be made in or against any payment due by Developer or District to City under this Development Agreement.

Section 16.03. Capacity of Parties Acting on Behalf of City.

Notwithstanding anything to the contrary in this Development Agreement, all references in this Development Agreement to employees, agents, representatives, contractors and the like of City shall refer only to such persons or entities acting on behalf of City in its capacity as a Party to this Development Agreement, and all such references specifically exclude any employees, agents, representatives, contractors, elected officials and the like acting in connection with the performance of City's other Governmental Functions.

Section 16.04. No Limitation on City's Governmental Functions.

The parties hereto acknowledge that no representation, warranty, consent, approval or agreement in this Development Agreement by City (as a party to this Development Agreement) shall be binding upon, constitute a waiver by or estop City from exercising in good faith any of its rights, powers or duties in its required Governmental Functions. For example, approval by City of this Development Agreement shall not constitute satisfaction of any requirements of, or the need to obtain any approval by, City's Fire Department, Building Inspections Department, Public Works Department, Planning Department and Economic Development Department or other approval required by City Code of San Antonio, Texas, or Governmental Rules.

ARTICLE 17. MISCELLANEOUS PROVISIONS

Section 17.01. Notices.

The Parties contemplate that they will engage in informal communications with respect to the subject matter of this Development Agreement. However, any formal notices or other communications required or permitted to be given by one Party to another by this Development Agreement shall be given in writing addressed to the Party to be notified at the address set forth below for such Party, (i) by delivering the same in person, (ii) by depositing the same in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified, or (iii) by depositing the same with a nationally recognized courier service guaranteeing "next day delivery," addressed to the Party to be notified, or (iv) by sending the same by telefax with confirming copy sent by mail. Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective from and after the date following such deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purposes of notice, the addresses of the Parties, until changed as provided below, shall be as follows:

<u>CITY:</u>	City of San Antonio 100 Military Plaza, 1 st Floor San Antonio, Texas 78207 Attention: Director of Development Services
With copies to:	City Clerk 100 Military Plaza, 2 nd Floor San Antonio, Texas 78205, and City Attorney 100 Military Plaza, 3 rd Floor San Antonio, Texas 78205
<u>DEVELOPER:</u>	Lumbermen's Investment Corporation 5495 Beltline Road, Suite 225 Dallas, Texas 75240 Attention: President
With a copy to:	Lumbermen's Investment Corporation 1300 S. MoPac Expressway Austin, Texas 78746 Attention: General Counsel
<u>DISTRICT:</u>	Cibolo Canyon Conservation and Improvement District No. 1 c/o Akin, Gump, Strauss, Hauer & Feld, L.L.P. 300 Convent, Suite 1500 San Antonio, Texas 78205
With a copy to:	Akin, Gump, Strauss, Hauer & Feld, L.L.P. 300 Convent, Suite 1500 San Antonio, Texas 78205 Attention: M. Paul Martin

The Parties may, from time to time, change their respective addresses, and each has the right to specify as its address any other address within the United States of America by giving at least five days written notice to the other Parties.

Section 17.02. Business Days.

If any date or any period provided in this Development Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.

Section 17.03. Time.

Time is of the essence in all things pertaining to the performance of this Development Agreement.

Section 17.04. Severability.

If any provision of this Development Agreement is illegal, invalid, or unenforceable under present or future laws such that the legitimate expectations of any Party hereunder is incapable of being realized and cannot be reformed to validly and legally meet such thwarted expectations, then, and only in that event, it is the intention of the Parties hereto that this Development Agreement shall terminate in all respects. In any other event, it is the intention of the Parties that the remainder of this Development Agreement will not be affected.

Section 17.05. Waiver.

Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Development Agreement shall not be deemed a waiver thereof or of any other provision hereof, and such Party will have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Development Agreement.

Section 17.06. Reservation of Rights.

To the extent not inconsistent with this Development Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

Section 17.07. Further Documents.

The Parties agree that at any time after execution of this Development Agreement, they will, upon request of another Party, execute and deliver such further documents and do such further acts and things as any other Party may reasonably request in order to effectuate the terms of this Development Agreement.

Section 17.08. Incorporation of Exhibits and Other Documents by Reference.

All Exhibits and other documents attached to or referred to in this Development Agreement are incorporated

herein by reference for the purposes set forth in this Development Agreement.

Section 17.09. Authority for Execution.

City hereby certifies, represents, and warrants that the execution of this Development Agreement is duly authorized and adopted in conformity with City Charter and City Ordinances. Developer hereby certifies, represents, and warrants that the execution of this Development Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws of such entity. District hereby certifies, represents, and warrants that the execution of this Development Agreement is duly authorized and adopted in conformity with the Act and has been approved by its Board of Directors.

Section 17.10. Governing Law; Venue.

THIS DEVELOPMENT AGREEMENT, AND THE ACTIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (EXCLUDING PRINCIPLES OF CONFLICTS OF LAW). VENUE SHALL BE IN BEXAR COUNTY, TEXAS.

Section 17.11. Attorneys' Fees.

If any Party to this Development Agreement defaults in the performance of any covenants, obligations or agreements of such Party contained in this Development Agreement and the other Party thereto places the enforcement of this Development Agreement, or any part thereof, or the exercise of any other remedy therein provided for such default, in the hands of an attorney who files suit upon the same (either by direct action or counterclaim), the non-prevailing Party shall pay to the prevailing Party its reasonable attorneys' fees and costs of court. In addition to the foregoing award of attorneys' fees to the prevailing Party, the prevailing Party shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Development Agreement into any judgment on this Development Agreement.

Section 17.12. No Oral Modification.

Any agreement hereafter made shall be ineffective to change, waive, modify, discharge, terminate, or effect an abandonment of this Development Agreement in whole or in part unless such agreement is in writing and signed by the Party against whom such charge, waiver, modification, discharge, termination or abandonment is sought to be enforced.

Section 17.13. No Party Deemed Drafter.

Each Party has thoroughly reviewed and revised this Development Agreement and has had the advice of counsel prior to execution hereof, and the Parties agree that none of them shall be deemed to be the drafter thereof.

Section 17.14. Use of Defined Terms.

Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of members of the relevant class. Any reference to this Development Agreement or any Exhibits hereto and any other instruments, documents and agreements shall include this Development Agreement, Exhibits and other instruments, documents and agreements as originally executed or existed and as the same may from time to time be supplemented, modified or amended.

Section 17.15. Multiple Counterparts.

This Development Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but taken together shall constitute only one document. The Parties agree to circulate for execution all executed such counterparts in order that each Party may obtain a counterpart executed by all Parties.

Section 17.16. Entire Agreement, Amendment and Waiver, Survival.

This Development Agreement, together with the exhibits hereto and the documents referenced herein, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter. Neither this Development Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought, and in the case of City, approved by action of City Council and in the case of District, approval by action of its Board of Directors. No failure or delay of any Party in exercising any power or right under this Development Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right of power, preclude any other or future exercise thereof or the exercise of any other right or power. All of the representations and warranties of each Party contained in this Agreement shall survive the execution, delivery and acceptance of this Development Agreement and any termination hereof. Unless otherwise set forth in this Development Agreement, all agreements of the Parties contained in this Development Agreement which must survive to afford each respective Party the anticipated benefits of such agreements shall likewise survive, whether or not identified in this Development Agreement to so survive.

Section 17.17. Table of Contents; Headings.

The table of contents and headings of the various articles, sections and other subdivisions of this Development Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions of this Development Agreement.

Section 17.18. Parties In Interest.

The terms of this Development Agreement shall be binding upon, and insure to the benefit of, the Parties hereto and their permitted successors and assigns. Nothing in this Development Agreement, whether express or implied, shall be construed to give any person (other than the Parties hereto and their permitted successors and assigns and as expressly

provided herein) any legal or equitable right, remedy or claim under or in respect of this Development Agreement or any covenants, conditions or provisions contained herein or any standing or authority to enforce the terms and provisions of this Development Agreement.

Section 17.19. Notices of Changes in Fact.

Promptly after either Party becomes aware of same, such Party will notify the other Party of (i) any change in any material fact or circumstance represented or warranted by such Party in this Development Agreement, and (ii) any default, event or condition which, with notice or lapse of time or both, could become a breach by such Party under this Development Agreement, specifying in each case, the nature thereof and what action such Party has taken, is taking and proposes to take with respect thereto. Such notice shall not delay or impede the exercise of remedy which City has under this Development Agreement or otherwise.

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03/13/02

THEREFORE, IN WITNESS WHEREOF, City and Developer have executed this Development Agreement
this _____ day of _____, 2002.

CITY OF SAN ANTONIO

_____, City Manager

DEVELOPER:

LUMBERMEN'S INVESTMENT CORPORATION

_____, President

This Development Agreement is hereby ratified and executed by District as of this _____ day of
_____, 2002.

**CIBOLO CANYON CONSERVATION
AND IMPROVEMENT DISTRICT NO. 1**

_____, President, Board of Directors

03/13/02

EXHIBIT A
PUBLIC IMPROVEMENTS

03/13/02

EXHIBIT B
CONSERVATION EASEMENT

03/13/02

EXHIBIT C
DEVELOPMENT PLAN

03/13/02

EXHIBIT D
DEVELOPMENT SCHEDULE

03/13/02

EXHIBIT E
FORM OF ESCROW AGREEMENT

03/13/02

EXHIBIT F
FORM OF FIRE STATION TRACT LEASE

03/13/02

EXHIBIT G
GOLF COURSE MANAGEMENT PLAN

03/13/02

EXHIBIT H
LAND USE RESTRICTIONS

03/13/02

EXHIBIT I
FORM OF LETTER OF CREDIT

03/13/02

EXHIBIT J
FORM OF MUNICIPAL SERVICES AGREEMENT

EXHIBIT K
OPEN SPACE RESTRICTED TRACTS

- i. Tract I**
- ii. Tract II**
- iii. Tract III**

03/13/02

EXHIBIT L
FORM OF TRAIL HEAD TRACT LEASE

03/13/02

EXHIBIT M
FORM OF WATER COMMITMENT